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OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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CHELSEA SCHOOL - REMAND HEARING : Case No. G-892
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A hearing in the above-entitled matter was held on
March 30, 2012, commencing at 9:32 a.m., at the Council
Office Building, Davidson Memorial Hearing Room, 2nd Floor,
100 Maryland Avenue, Rockville, Maryland 20850 before:

Lynn Robeson, Hearing Examiner

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A P P E A R A N C E S

Page

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5

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1 P R O C E E D I N G S

2 MS. ROBESON: Public hearing in the remand of
3 local map amendment G-892 filed by Chelsea Residential
4 Associates, LLC. The applicant is requesting a rezoning of
5 property from the R-60 zone to the R-T 12.5 zone for
6 property located at 630 Ellsworth Avenue, Silver Spring,
7 Maryland. The property's legal description is lot 58,
8 Evanswood Section 1.

9 I believe that we are beginning the rebuttal case.
10 Are there any preliminary matters or should we go right into
11 it?

12 MR. BROWN: Yes, ma'am. It's my understanding
13 that one of the citizen witnesses who wasn't here on Friday
14 afternoon would like to testify. I'd like him to make his
15 request directly to you.

16 MS. ROBESON: Okay.

17 MR. MILLSON: It's me, John Millson. I was here,
18 actually, but I got sick. I got this terrible cough so I
19 had to leave in the afternoon.

20 MS. ROBESON: Well, I did notice that you were
21 gone. So, I'm going to let him go ahead.

22 MR. HARRIS: We have no problem.

23 MR. MILLSON: It'd be a shame, right? We spent so
24 much time together.

25 MR. HARRIS: You deserve your day in court.

1 MR. MILLSON: Should I come up to the microphone
2 or --

3 MS. ROBESON: Yes, please.

4 MR. HARRIS: The one thing I would ask, Ms.
5 Robeson, is if after Mr. Millson's testimony and cross
6 examination, we could have a brief recess for us to decide
7 what, if anything, we need to present in rebuttal because we
8 had prepared our rebuttal without his testimony in mind.

9 MS. ROBESON: Okay. That's fine.

10 MR. HARRIS: Thanks.

11 MS. ROBESON: Mr. Millson, I believe that you were
12 here Friday but were you previously sworn?

13 MR. MILLSON: I was sworn. Right.

14 MS. ROBESON: Okay. You're still under oath.

15 MR. MILLSON: I was here all day the first time.

16 MS. ROBESON: That's what I recall.

17 MR. MILLSON: And half the day the next time, and
18 I've been here plenty of other times.

19 MS. ROBESON: I know that. I never forget you.

20 MR. MILLSON: It's been sheer pleasure. Every
21 minute was a pleasure.

22 MS. ROBESON: Yes.

23 MR. MILLSON: All right? By the way, I've learned
24 a lot. So -- okay. My name is John Millson. I have lived
25 at 8603 Springvale Road since 1989. The location of my

1 house is almost directly across from the proposed
2 intersection of the private road and Springvale Road. Okay.
3 You all know math I'm a math professor with these
4 statistics. We've been through all that. Okay?

5 Now, the first thing I'd like to say, it doesn't
6 really -- mostly want to talk about the two EYA claims about
7 traffic. But, first I wanted to say something to protect my
8 options and that's about the headlights in my window. As
9 you know, I wrote you a letter about that. I was concerned
10 about --

11 MS. ROBESON: Yes.

12 MR. MILLSON: -- with a T intersection. Now, with
13 a pork chop intersection with the private road and
14 Springvale Road, I will not have a sustained direct hit from
15 car headlights as would have happened earlier with the EYA's
16 earlier T intersection in my front yard. Assuming they
17 moved -- there's a lot of assumptions there. That was
18 assuming that they had to move the road which it looks like
19 they don't have to do and that they moved it up to the next
20 alleyway.

21 MS. ROBESON: Right.

22 MR. MILLSON: Of course, if they moved to another
23 alleyway, everything I'm saying would be going for some
24 other of my neighbors.

25 MS. ROBESON: Right.

1 MR. MILLSON: For example, the original plan came
2 out of Roberta Bowman's yard, and I advised her to right to
3 you, and I think she did.

4 MS. ROBESON: She did.

5 MR. MILLSON: Okay. So, I welcome the fact that
6 EYA has eliminated this possibility which would be truly
7 horrible for me. However, my colleague, Michael Gurwitz,
8 has already pointed out the pork chop does not eliminate the
9 possibility of headlights in the window.

10 He described that drivers coming out of the
11 development where his mother lives make a sweeping left turn
12 coming out of the right hand branch of the pork chop. Their
13 headlights sweep through an almost 300 degree angle. Okay.
14 In case there are headlights in my window, I intend to get
15 legal advice, hear what lawyers would say. If, if in the
16 unlikely event EYA chose to return to the T intersection,
17 then I believe I would have a good case based on the fact
18 that EYA made the choice most harmful to me. I just wanted
19 to get that on record to protect my future. I'm not trying
20 to be combative but I'm just trying to -- okay.

21 So, let's get down to business now. So, it's been
22 my job to look at EYA's claims that came through Wells
23 concerning traffic.

24 MS. ROBESON: Correct.

25 MR. MILLSON: Okay. There's two of them. The

1 first one was the number of trips generated by the residents
2 of the development, the number of trips generated by the
3 development will not be significant. So, that's what I
4 talked about before, and the new one is there'll be no
5 problem with cut-through traffic on the private road.

6 So, let me emphasize the proofs of these two
7 claims are very different. The first one was mathematical.
8 You know, it basically what's called one variable regression
9 based on data and the second was experimental. They're just
10 given by preparing certain trips. I'm going to explain a
11 little more because actually, I was very tired when Mr.
12 Kabatt presented it, and I didn't understand it.

13 MS. ROBESON: Uh-huh.

14 MR. MILLSON: In fact, I went to see the people in
15 the engineering departments, Ginsey (phonetic sp.), and the
16 other people, and they told me a way you could do it
17 mathematically. I don't think it's any better. I don't
18 think it's any better. It's a lot fancier. So, that's what
19 I thought they were going to do but that's not what they
20 did. Like I said, their, I think their way is just as good,
21 you know, because they both have a flaw that I want to
22 explain.

23 So, what I want to say is let me emphasize that we
24 are not interested in whether these claims are true right
25 now in 2012. We are interested in whether they are going to

1 be true in 2020 and beyond.

2 MS. ROBESON: Uh-huh.

3 MR. MILLSON: All right? Because this is all --
4 I'm going to be living there for a long time.

5 MS. ROBESON: Uh-huh.

6 MR. MILLSON: So, the real question -- so the
7 critical test of either of these claims/proofs will, is -- a
8 critical question is will it be correct in 2020? Does this
9 proof, do these proofs that they've run, right --

10 MS. ROBESON: Uh-huh

11 MR. MILLSON: -- work in 2020?

12 MS. ROBESON: Uh-huh.

13 MR. MILLSON: So, for a joke, I'm going to call
14 this a test of time. So, do these, do these proofs stand
15 the test of time. So, first let's look at the trip
16 generation. See, after all, everything we say here is
17 looking into the future. For a start, sort of in the not
18 too distance future when the development is built. But, of
19 course, I'm interested in a much farther distant future long
20 after it's built as long as I'm living there. All right?

21 So, let's look at the trip generation model.

22 What's that based on? Well, that's --

23 MS. ROBESON: Well --

24 MR. MILLSON: Yeah.

25 MS. ROBESON: Okay. I'm not sure -- one thing we

1 said on remand was that the local area transportation review
2 and policy area mobility review were not going to be issues
3 in this --

4 MR. MILLSON: Well, I don't think I question that
5 at all.

6 MS. ROBESON: Oh. Okay.

7 MR. MILLSON: I'm not questioning anything. I'm
8 just -- okay. If I may go on and see what you, you know --

9 MS. ROBESON: Okay. All right.

10 MR. MILLSON: -- what people think.

11 MS. ROBESON: Go ahead.

12 MR. MILLSON: So, I want to contrast so that the
13 trip generation model is fine. What is it based on? You
14 know how many townhouses there are going to be.

15 MS. ROBESON: Uh-huh.

16 MR. MILLSON: Forever.

17 MS. ROBESON: Uh-huh.

18 MR. MILLSON: They might build another one or one
19 might fall down but basically that test stands the test of
20 time.

21 MS. ROBESON: Uh-huh.

22 MR. MILLSON: Because it takes the number of
23 units --

24 MS. ROBESON: Uh-huh.

25 MR. MILLSON: -- multiplies by a proportionality

1 factor, and estimates the number of trips.

2 MS. ROBESON: Uh-huh.

3 MR. MILLSON: What I didn't, you know -- I
4 quarreled with the proportionality factor of those, you
5 know, and then I also, Ginsey pointed out, well, it might
6 have been a mistake just to focus on peak hour.

7 MS. ROBESON: Uh-huh.

8 MR. MILLSON: Ginsey pointed out well, there's
9 going to be a lot of other trips.

10 MS. ROBESON: Uh-huh.

11 MR. MILLSON: But, nevertheless, in terms of 2020,
12 that model is just as good because the number of units isn't
13 going to change.

14 MS. ROBESON: Okay. I see what you're saying.

15 MR. MILLSON: So, that's fine. So, maybe I can go
16 over here, and I don't know how many people understood what
17 Mr. Kabatt, his idea, his test. I didn't understand it --

18 MS. ROBESON: Okay.

19 MR. MILLSON: -- about the cut-through traffic.

20 MS. ROBESON: Okay.

21 MR. MILLSON: So, let me just sort of roughly --
22 I'm going to say it very roughly, okay.

23 MS. ROBESON: You mean the timing test?

24 MR. MILLSON: The time trials.

25 MS. ROBESON: Okay.

1 MR. MILLSON: So, his point was well, you start
2 here. So, this is -- and here is, here is Cedar and
3 Ellsworth.

4 MS. ROBESON: Okay.

5 MR. MILLSON: And then you go up Cedar to
6 Colesville. So, he compared the time. So, it was entirely
7 experimental. There's no mathematics. There's a
8 mathematical way but it's no better. Oh. That's great. I
9 thank you, Aakash, Mr. Thakkar.

10 MR. THAKKAR: You're welcome.

11 MS. ROBESON: Well, can you flip that?

12 MR. HARRIS: Well, the only problem with that is
13 it's oriented differently. So, you might rotate it.

14 MS. ROBESON: Yeah.

15 MR. THAKKAR: You can just --

16 MS. ROBESON: Yeah. Turn it upside down.

17 MR. HARRIS: Like that.

18 MS. ROBESON: There.

19 MR. MILLSON: Okay. Can somebody -- oh. Here's
20 Ellsworth.

21 MS. ROBESON: Now, okay. Before he starts and I'm
22 sorry to do this. Is this an exhibit that's been previously
23 submitted? Because I couldn't find the exhibit.

24 MR. HARRIS: I believe so but I don't see a number
25 on it.

1 MS. ROBESON: No. Well, none of them have
2 numbers. But, I was just going to mark them as, you know,
3 the previous exhibit, you know, large version but what I
4 couldn't find was this exhibit in the record somewhere.

5 MR. MILLSON: Actually, you know, Mr. Kabatt had a
6 better picture. Right? When he had the three paragraphs on
7 the other side, he actually had the trips in color.

8 UNKNOWN FEMALE 1: Yeah.

9 MR. MILLSON: But, let me just --

10 MS. ROBESON: Do you have that one?

11 MR. THAKKAR: We have it.

12 MS. ROBESON: Is that a --

13 MR. MILLSON: That's fine. This is okay with me.
14 Okay. Yeah. So, they have these three color trips.

15 MS. ROBESON: Well, wait. Wait. Wait. I really,
16 if --

17 MR. MILLSON: I like this myself but if you want
18 me to -- let me use this one. Can I use this one or --

19 MS. ROBESON: Okay. That's --

20 MR. MILLSON: Let me just use this one, guys.
21 This is fine with me.

22 MR. THAKKAR: You sure?

23 MR. MILLSON: Yeah.

24 MS. ROBESON: I just want to make sure what -- my
25 problem with that one is I'm not 100 percent sure it's in

1 the record. It's been --

2 MR. HARRIS: Can we put it in the record? I don't
3 know --

4 MS. ROBESON: Yeah. We'll mark it. Let's --

5 MS. CAVANAUGH: I'm sorry. Is this an existing
6 exhibit that's been blown up or is it a new exhibit?

7 MS. ROBESON: That's what I -- I think, I think--

8 MR. HARRIS: No.

9 MS. CAVANAUGH: If it's a new exhibit then it
10 shouldn't be coming in.

11 MR. HARRIS: It's been here since the first day of
12 the hearings.

13 MS. ROBESON: Yeah. It has and --

14 MS. CAVANAUGH: Of the new hearings?

15 MR. HARRIS: No. The old hearings.

16 MR. MILLSON: All I'm doing is just reviewing --
17 maybe everybody understood Mr. Kabatt's thing except me, and
18 I shouldn't be doing this but --

19 MS. ROBESON: No. You should. No. No. Go
20 ahead.

21 MR. MILLSON: Okay.

22 MS. ROBESON: Well, first I'm going to just mark
23 this out of an abundance of caution as 341, and this is an
24 aerial photograph of the Chelsea School site.

25 (Exhibit 341 marked for

1 identification.)

2 MS. ROBESON: Oh. You know why I probably didn't
3 see it? Because it was in the first hearing.

4 MR. HARRIS: Right.

5 MS. ROBESON: Well, I'm going to mark it just for
6 the heck of it as --

7 MR. HARRIS: Maybe make a note that it may be a
8 duplicate entry.

9 MS. ROBESON: Right. And I'll check that. I'm --
10 okay. We've delayed you. So, go ahead.

11 MR. MILLSON: Oh. I don't mind. I don't mind. I
12 got all the time in the world. Well, you people don't. So,
13 what Mr. Kabatt's idea was, he had three trips from point A
14 here which is Ellsworth and Cedar.

15 MR. HARRIS: Move up. Wrong point.

16 MR. MILLSON: Oh. Sorry. Ellsworth and Cedar.
17 Thanks. All right. Ellsworth and Cedar to point -- so I
18 would say roughly Ellsworth Garage, though, that wasn't in
19 because that wouldn't make a big difference but roughly
20 Ellsworth Garage and then the end point. The destination
21 was roughly Mrs. K's. So, that was Dale and --

22 MS. ROBESON: Mrs. K's Toll House at Dale and --

23 MR. MILLSON: Yeah. Roughly.

24 MS. ROBESON: -- Colesville.

25 MR. MILLSON: I don't think Mr. Kabatt went to

1 Mrs. K's but that's the idea. Right? You want to measure
2 the time it's going to take from roughly Ellsworth Garage
3 and Mrs. K's. If you'll allow me to say this very roughly.
4 Okay.

5 MS. ROBESON: Yeah.

6 MR. MILLSON: Okay. So, the first trip is you go
7 up Cedar to Colesville and then a straight shot to
8 Colesville to Mrs. K's.

9 MS. ROBESON: Yeah.

10 MR. MILLSON: Okay? His next one was, well, you
11 go through the development. So, you go a little ways on
12 Ellsworth --

13 MS. ROBESON: Yeah.

14 MR. MILLSON: -- use the cut-through road which
15 doesn't exist but he simulated. I don't quite know how but
16 I don't really care because I simulated by going up and down
17 Ellsworth. See, the cut-through road doesn't exist. Right?
18 So, he has to compare this --

19 MS. ROBESON: Yeah. I think he did have some
20 testimony on how it simulated out.

21 MR. MILLSON: Yeah. I'm not quarreling with that.

22 MS. ROBESON: Okay. Go ahead.

23 MR. MILLSON: So, basically, the other was sort of
24 a simulation trip but roughly it was. Let's pretend to cut-
25 through. The private road exists. So, going here across

1 the private road --

2 MS. ROBESON: Uh-huh.

3 MR. MILLSON: -- back up Ellsworth. I mean back
4 up Springvale --

5 MS. ROBESON: Right.

6 MR. MILLSON: -- across Ellsworth and then somehow
7 get to Mrs. K's. Maybe go to Dale. I think he had some
8 other arrows but let's just say he went to Dale and up to
9 Mrs. K's.

10 MS. ROBESON: Right.

11 MR. MILLSON: And then the other one used
12 Pershing. I just want to talk about these two trips because
13 the third trip --

14 MS. ROBESON: That's fine.

15 MR. MILLSON: Okay. So, roughly what you have,
16 you have a big rectangle. Right? You want to go from the
17 lower left corner to the upper right corner.

18 MS. ROBESON: Oh. The big rectangle is the
19 property.

20 MR. MILLSON: Yeah. Well, you have this big
21 rectangle like this. So, you have a big rectangle --

22 MS. ROBESON: Oh. I see what you're saying.

23 MR. MILLSON: -- which has one in the lower left
24 vertex is right here at the Ellsworth Garage.

25 MS. ROBESON: At Cedar and Ellsworth.

1 MR. MILLSON: And the upper right vertex is at
2 Mrs. K's.

3 MS. ROBESON: Okay.

4 MR. MILLSON: The two long sides are Colesville
5 and Ellsworth.

6 MS. ROBESON: I see.

7 MR. MILLSON: And the two short sides are Cedar
8 and Dale.

9 MS. ROBESON: Yes.

10 MR. MILLSON: And what you're really doing --
11 okay. But, of course, this bottom rectangle, he went
12 through the private road there and back up to Ellsworth.
13 And see you have this one. So, up Cedar, across Colesville

14 MS. ROBESON: Yes.

15 MR. MILLSON: The other one is go a little ways on
16 the private road, back up, over and up. So, it's like a
17 rectangle with a jog, going to the private road.

18 MS. ROBESON: Yes. Yes.

19 MR. MILLSON: And what he found was it took
20 considerably longer, in fact, to do the private road one.

21 MS. ROBESON: Yes.

22 MR. MILLSON: So, that proves nobody is going to
23 cut-through because it takes longer. I don't know why, you
24 know, why go through all this business of a private road if
25 it's a much shorter trip just to, bing-bing, from

1 Colesville?

2 MS. ROBESON: Right.

3 MR. MILLSON: So, that presented your proof,
4 presented Mr. Kabatt's proof.

5 MS. ROBESON: All right.

6 MR. MILLSON: So, I started thinking about that,
7 and in fact, this using a private road was way longer. I
8 mean, remember, that was he had a blue -- he had the bar
9 graph. Right? So this is the -- Colesville was the blue
10 bar graph. What was the middle bar graph? Orange?

11 MS. ROBESON: Okay. Okay. Hey, let's take a
12 minute. Can we get the EYA's exhibit up of the time trials?
13 I know what you're talking about.

14 MR. MILLSON: I don't really need it because it's
15 -- I'm sure of --

16 MS. ROBESON: I know you don't.

17 MR. MILLSON: Okay. But that's fine.

18 MS. CAVANAUGH: She wants it.

19 MS. ROBESON: I do.

20 MR. MILLSON: You want it.

21 MS. CAVANAUGH: She wants it.

22 MR. MILLSON: That's it, you know. I was pretty
23 impressed by this one, actually.

24 MS. ROBESON: You're way ahead of me, see.

25 MR. MILLSON: No. Because I've been thinking

1 about it all week. I typed up my testimony. I must have
2 taken about 100 pages, you know, just to end up with three.
3 I kept changing and changing. Well, I didn't have a clue
4 what's going on. So, I want to thank Mr. Kabatt. He was
5 very professional in telling me these ideas, a very good
6 idea. So, where is the exhibit for the second --

7 THE REPORTER: She's got it. They're right up on
8 here.

9 MR. MILLSON: Oh. There up here.

10 THE REPORTER: Yeah.

11 MR. MILLSON: Well, it's important that everyone
12 understand this. Right? Because this is a --

13 UNKNOWN FEMALE 2: It is.

14 MS. ROBESON: It is. That's why I --

15 MR. MILLSON: When is it an analysis? Like when
16 the law -- almost a compliment of you people. When the law
17 stuff comes up, I tune up. But when the sort of
18 mathematics, statistics comes up, you people tune up. It's
19 like --

20 MS. ROBESON: I have to tell you, when you --
21 guilty as charged. No. I want to make sure I understand
22 it.

23 UNKNOWN FEMALE 2: Somebody's tuning out right
24 now.

25 MR. MILLSON: She's tuning out now? So, here's

1 the picture. So, first in the blue one was his Colesville
2 route. So, see here's the, what I call the rectangle.

3 MS. ROBESON: Yeah.

4 MR. MILLSON: So, the blue one is --

5 MS. ROBESON: And we're looking at exhibit -- it's
6 up in the -- it's not marked either. We'll get there.

7 MR. MILLSON: Well, we'll wait.

8 MS. ROBESON: I'm just an attorney so you've got
9 to -- I'm slow.

10 MR. MILLSON: No. Anybody remember the American
11 Dream in 1996?

12 UNKNOWN FEMALE 2: Yes.

13 MR. MILLSON: Now in that case -- this isn't about
14 Wells, and Wells didn't do anything like this, but in that
15 case they really did do something tricky. You know about
16 this? What happen?

17 MR. HARRIS: Yeah.

18 MR. MILLSON: So, they had this problem. The
19 American Dream had to prove that they were going to have
20 millions of visitors. Right? To interest private
21 investors. On the other hand, they had to prove the county
22 weren't going to get grid locked. So, you know how they did
23 it? They doubled the number of people they should have in
24 each car.

25 So, even if you're very mathematically challenged,

1 you keep the number of people. You double the number of
2 people in each car to get half the number of cars. See,
3 it's actually data on the basis of the other malls, the
4 American Dream and the West Edmonton Mall involved? You can
5 show there's like, this is on the web, one point five people
6 per car, and EYA got something --

7 MS. ROBESON: Okay. Wait. Wait. Just --

8 MR. MILLSON: Okay. I'm off the track. I just
9 want to explain --

10 MS. ROBESON: You've got to be -- humor me.
11 You've got to humor me.

12 MR. MILLSON: Okay. And I'm off the track.

13 MR. HARRIS: 291N as in Nancy.

14 MS. ROBESON: Colored aerial with, oh. Okay. I
15 see.

16 MR. MILLSON: I want to say that that's not
17 relevant to today at all.

18 MS. ROBESON: I saw colored aerial. Okay. Go
19 ahead. I'm sorry. We're looking at, for the record, we're
20 looking at 291N. Okay. Now you can go. I promise.

21 MR. MILLSON: Here's, roughly a big rectangle.
22 Okay?

23 MS. ROBESON: Uh-huh.

24 MR. MILLSON: So, here's the trip that I would
25 like to prove takes a lot longer because then people will

1 cut-through.

2 MS. ROBESON: The blue line.

3 MR. MILLSON: The blue line.

4 MS. ROBESON: The blue trip.

5 MR. MILLSON: But, remember this jog here. This
6 is very important in a way because this is -- in fact,
7 Colesville usually isn't so bad but -- so then, now the
8 comparison trips. Let's just look at the middle trip.
9 Okay?

10 MS. ROBESON: Uh-huh.

11 MR. MILLSON: They're roughly the same. They're
12 the same idea.

13 MS. ROBESON: And the middle strip is the
14 brownish, orange-ish.

15 MR. MILLSON: Yeah. So it's more like this here
16 is the private road.

17 MS. ROBESON: Yes.

18 MR. MILLSON: Back up Ellsworth. Right? And then
19 roughly like this. Let me forget the middle. So, I mean
20 this other is a possibility. They've got them in.

21 MS. ROBESON: Right.

22 MR. MILLSON: They could be important but I'm
23 trying to -- the point I want to make is so, you know, it
24 doesn't really depend on details like this so much. So,
25 basically, you compare this one to this one, and Mr. Kabatt

1 said this is a lot longer. So, nobody's going to use this.
2 Nobody's going to cut-through. What can we do? This is
3 proven. So, I started looking at it. This one was so much
4 longer. Well, you see that one's not that -- but let me try
5 something else. Let's put myself back in 1990 before they
6 did the traffic plan.

7 MS. ROBESON: Uh-huh.

8 MR. MILLSON: Suppose I was a wealthy investor.
9 So then the county -- let's just see. Let's compare this
10 trip to this trip or suppose, suppose I need to pay for the
11 traffic protection plan. I wanted to prove you didn't need
12 a traffic protection plan.

13 MS. ROBESON: Okay.

14 MR. MILLSON: Or in particular, you don't need to
15 block up Ellsworth with this barrier.

16 MS. ROBESON: Yes.

17 MR. MILLSON: Then I could have compared this trip
18 to this trip.

19 MS. ROBESON: Right.

20 MR. MILLSON: I was using Mr. Kabatt's test in
21 another context.

22 MS. ROBESON: Yes.

23 MR. MILLSON: Well, I found that this trip only
24 took one second longer. In other words, you didn't have to
25 build the traffic barrier at all. So, you basically, you

1 have this rectangle. Right?

2 MS. ROBESON: I see what you're saying.

3 MR. MILLSON: So, I don't know how to explain this
4 because, well, we need a traffic plan. They had us doing
5 stuff down here. What this is saying is we probably didn't
6 need the traffic barrier. They're saying we didn't need the
7 traffic barrier based on this part. This was very
8 surprising to me, you know, because, I mean, obviously,
9 living here, I've seen a lot of traffic at 8 o'clock, 8:00
10 to 9:00 to be a ton of traffic coming up here or over here
11 and at night it come back down here.

12 MS. ROBESON: You're pointing to the orange route.

13 MR. MILLSON: Yes.

14 MS. ROBESON: Starting from Springvale.

15 MR. MILLSON: Now, it could have all come from
16 down here. I have no idea. Right?

17 MS. ROBESON: Uh-huh.

18 MR. MILLSON: So, this is what I don't understand
19 about traffic. Well, they put in all this stuff then
20 traffic stopped. Now, I don't know why because the people
21 coming down here could have just gone straight up Springvale
22 but the cars went away. So, I don't know what happened. I
23 should say when I tested, most -- the number of times I, you
24 know, when I -- I came up with, well, I drive slower than
25 this guy. So, I came at about three --

1 MS. ROBESON: The blue.

2 MR. MILLSON: Yes. Three. I came about three
3 minutes the blue trip. But still, I was getting stopped in
4 this same ballpark. Well, yesterday, I got to admit I
5 cheated a little. Yesterday, when I came home with my wife
6 from Target, I saw that there was a lot of traffic. There
7 was a lot of cars waiting at the light at Mrs. K's. So, I
8 thought, aha. This is a good time to make a new test on
9 Colesville. In fact, I took --

10 MS. ROBESON: Were you northbound or southbound?

11 MR. MILLSON: Well, as I was going just testing in
12 northbound.

13 MS. ROBESON: Oh. Okay.

14 MR. MILLSON: So, my wife is driving. So, she
15 drives faster than most so they pass me. So, we went around
16 here and we, you know, I did a, you know, I did a trip. I
17 would start at Ellsworth Garage. So, this is going to be
18 longer than Mr. Kabatt's.

19 MS. ROBESON: Yes.

20 MR. MILLSON: Because of that light. Right? But,
21 I was still coming up with three, four minutes, you know,
22 but that time it took five minutes. So, it took definitely
23 longer than all the other times.

24 So, the first small point I want to make, this is
25 my main point is, that, yeah. Okay. There'll be times when

1 Colesville itself will be bad, and, you know, based on these
2 measurements, you could make an argument that you didn't
3 have to build a traffic barrier at Ellsworth at all. So,
4 you know, Wells can run these tests or maybe I wasn't right
5 because I just did them a few times but why did they build
6 it? Why did they build the traffic -- potentially, because
7 it was common sense.

8 So, I'd like to say, you know, you're not going to
9 have many more mathematicians coming through here. So, I'd
10 just like to say I always think that common sense will
11 always trump statistics. So, this is kind of arguments and
12 what did the county think when it said you've got a central
13 business district. You've got a residential neighborhood.
14 The residential neighborhood up against it deserves a
15 protection plan. All right. That's -- and they didn't go
16 making tests. They just used common sense.

17 But, what I really want to get to is the -- to do
18 the test of time. See, let's think about this in terms of
19 time. So, let's put ourselves in 2020.

20 MS. ROBESON: Okay.

21 MR. MILLSON: In 2020, the time for this route
22 isn't going to change because the neighborhood is going to
23 be -- I mean this is roughly, right, because who knows,
24 there could be time changes but the time for this trip isn't
25 going to change much because the neighborhood isn't going to

1 change. There's not going to be a whole lot more houses, a
2 whole lot more cars in the neighborhood. All right? But in
3 2020, the time for this trip is going to go way up. I think
4 everybody admits that it's going to go up. I guess
5 everybody admitted it would go up. Way up. Well, you know,
6 sorry, but it's like an argument.

7 Remember, the reason, the basis of Mr. Kabatt's
8 proof is this one takes longer than that. So, everybody's
9 going to take the quick route. But what if in 2020 this one
10 is taking longer? I believe this one is going to take
11 longer and longer and longer as time goes on and you get
12 more and more stuff here.

13 So, let me give you one very simple reason why.
14 Down here somewhere, they're building the Citron Apartments,
15 you know, there's that big apartment there.

16 MS. ROBESON: Uh-huh. South of Cedar?

17 MR. MILLSON: Yeah.

18 MS. ROBESON: Yes.

19 MR. MILLSON: Well, they have like 220, one, two,
20 three bedroom apartments. Now, what are these guys -- so,
21 they're going to start cluttering up this road. Why?
22 Because these guys say there's going to be 170 parking
23 places and then they'll have some parking in Ellsworth
24 Garage. Then they're all going to come out on Cedar.

25 Then we know, we know there's going to be a big

1 building on Fenton and Wayne. Over there. Right? There's
2 going to be a whole lot. There's going to be more and more
3 construction all the time in downtown Silver Spring. In
4 fact, I have the Gazette, Wednesday's Gazette, with me and
5 they're talking about building some right beside Fenton and
6 Wayne for seniors like a 100 unit thing. Every time you
7 pick up the paper, there's something, you know, arguing for
8 more growth down here. I mean, I think I'm preaching to the
9 choir. Everybody knows there's going to be a lot more stuff
10 going on down here.

11 MS. ROBESON: So, what you're saying is that Mr.
12 Kabatt's test is based only on existing conditions.

13 MR. MILLSON: It's highly time dependent, and I
14 say it fails the test of time.

15 MS. ROBESON: Because it doesn't take into account
16 future traffic.

17 MR. MILLSON: That's exactly what I'm saying, and
18 so you have to decide on your -- you know, my feeling is
19 that if we keep going the way we are, we're going to get
20 grid locked down there, you know. I mean, --

21 MS. ROBESON: Well, what about this -- I think
22 part of the idea is transit is going to become more useable
23 because there will be too much grid lock.

24 MR. MILLSON: Of course, you need --

25 MS. ROBESON: More people are going to use

1 transit.

2 MR. MILLSON: So, I mean, these are things we have
3 to weigh. Right? I mean, like, yeah. I mean, hopefully,
4 that's going to happen, and also speaking of transit, we're
5 going to, at some point, and I'm not holding my breath. You
6 know, it may not be a lie, but there's supposed to be a
7 purple line on Wayne. Right? And that's going to make
8 Wayne a lot less drivable, too. Speaking of transit, but
9 it's going to --

10 MS. ROBESON: No. I'm just asking why is that?
11 Why is --

12 MR. MILLSON: Because there's going to be a --
13 maybe they don't. There's going to be a bus, you know. I
14 don't know what the bus is going to look like. Everybody's
15 going to get stronger from taking the -- but it's going
16 right down the middle of the road. But there's something
17 else. I don't know --

18 MS. ROBESON: Oh. Oh. I see.

19 MR. MILLSON: In a sense, it's going to get more
20 crowded.

21 MS. ROBESON: You're saying fewer car lanes.

22 MR. MILLSON: Yeah. I mean, it's going to be more
23 crowded. Right? If I'm sharing the road with a bus?

24 MS. ROBESON: Right.

25 MR. MILLSON: So, the purple line -- on one hand,

1 I'll be able to walk down and take the purple line to
2 school.

3 MS. ROBESON: Right.

4 MR. MILLSON: But on the other hand -- so that's
5 good for me. But, on the other hand, it's going to make
6 Wayne a lot more crowded which could conceivably force more
7 people up here. Right? And doing this cut-through.

8 MS. ROBESON: So, your position is that his time
9 test based on existing conditions is not valid --

10 MR. MILLSON: In 2020.

11 MS. ROBESON: -- because there's no evidence as to
12 what future conditions are going to be.

13 MR. MILLSON: I mean, this is, you know, I think
14 this part is going to get really bad. Now, Mr. Kabatt, he
15 argued, yeah sure but --

16 MS. ROBESON: When this part, you're talking --

17 MR. MILLSON: This little short segment on Cedar.

18 MS. ROBESON: Cedar between Ellsworth and
19 Colesville.

20 MR. MILLSON: So, suppose you come out of Citron
21 Apartments. Right? And you look and you see. Oh, my God.
22 Cedar's just packed. Well, then you can come out on
23 Ellsworth. Right here. Right?

24 MS. ROBESON: Uh-huh.

25 MR. MILLSON: Now, there's a light here.

1 MS. ROBESON: Uh-huh.

2 MR. MILLSON: So, the light will give you a
3 channel right through here. So, I mean, it's a wall of
4 traffic but, you know, you can come off. So, you're looking
5 at the wall of traffic. Right? But there's a space right
6 at that thing. You wait until the light turns green and you
7 go right through.

8 MS. ROBESON: I see.

9 MR. MILLSON: So, they can go right through and
10 then start using this cut-through road. That's just one
11 example.

12 MS. ROBESON: I understand what you're saying.

13 MR. MILLSON: So, that's my main point is the fact
14 that this second, good as it is right now in 2012, I don't
15 argue with it, and it's very clever, you know, to simulate a
16 cut-through road. Well, first thing, how do you do a turn
17 if the road isn't there. But, I agree, I mean, you can
18 just, you know, go up and down but I think it's --
19 everybody's going to agree things are going to get worse
20 traffic wise. The question is it's going to get so bad.
21 Right? It's a question of how bad are they going to get.

22 MS. ROBESON: Now, what about the things, the
23 traffic slowing --

24 MR. MILLSON: Oh. The signs.

25 MS. ROBESON: Well, the signs --

1 MR. MILLSON: They'll all help.

2 MS. ROBESON: -- the narrow width, the parked cars
3 on either side. You don't think --

4 MR. MILLSON: Well, the different pavement, the
5 stop signs.

6 MS. ROBESON: Yes.

7 MR. MILLSON: You know, Mr. Bulgrami told us those
8 stop signs weren't enforceable. But the only way Kathleen
9 and I and Peter Perenyi went to see Mr. Bulgrami. That's
10 when they -- I was so stoned by the fact that the road was
11 going to -- we have to move. I was panicked because --
12 that's just I wrote in the letter. But, he also mentioned
13 the signs weren't enforceable, right?

14 So, I mean, like, I see people going through that
15 Elkwood barrier all the time but I can't pick up, you know,
16 if I could pick up my cell phone and call the cops, they're
17 not going to come, and well, the guys going to be long gone.
18 I don't want to -- I want to say I really appreciate, you
19 know, that they're making an effort.

20 But, to me, the safe way to go is the cul-de-sac.
21 The cul-de-sac eliminates -- all I've been talking about
22 traffic, traffic. That's all that's really worrying me.
23 You know, a lot of traffic in the neighborhood, you know.
24 And Tom Armstrong made a calculation. He said you could get
25 the cul-de-sac -- now this is a critical number because, you

1 know. He said giving up no more than five townhouses.
2 Apparently, you know, to have that -- this is a cul-de-sac
3 where you come in, go around the circle, go back out.

4 MS. ROBESON: Yes. Uh-huh.

5 MR. MILLSON: My colleagues checked that it was
6 okay in terms of fire and rescue. Granted, I just heard
7 this from my colleagues. So, the five townhouses. Of
8 course, you have to check that. You know, I mean, Mr.
9 Youngentob with the balance, it's really the balance
10 against, you know, profit. For a developer, it's a
11 business. You know, they're in town to make money. Right?
12 And the concerns of private citizens.

13 So, for me, like having something coming directly
14 into my front window like that one plan, that was crossing
15 the line. You know that was crossing the line. So, anyway,
16 this is -- I know at one point they said, Mr. Youngentob
17 said this cul-de-sac they could do it. Remember, that was
18 one of their models earlier. They said they could do it. I
19 mean, to me, that would -- I wouldn't worry about, you know,
20 once you had that cul-de-sac, no other traffic from the
21 residents. There would be no cut-through. None of the
22 traffic from the development would come into our
23 neighborhood. There would be no headlights in my window.
24 Absolutely no possibility of headlights in anybody's window.
25 So, the cul-de-sac removes every single problem I'm worried

1 about.

2 MS. ROBESON: Okay.

3 MR. MILLSON: Okay. That's all I have to say.

4 Thanks for your patience. It's been really a pleasure being
5 here.

6 MS. ROBESON: Thank you. I'm not sure I believe
7 you.

8 MR. MILLSON: It was kind of exciting for me.

9 MS. ROBESON: Especially now that I'm going to say
10 Mr. Harris, it's your turn for questions.

11 MR. BROWN: I do have one, first.

12 MS. ROBESON: Oh. I'm sorry. Mr. Brown, go
13 ahead.

14 DIRECT EXAMINATION

15 BY MR. BROWN:

16 Q Mr. Millson, have you and I discussed the
17 substance of your testimony at any point before this hearing
18 began today?

19 A No.

20 Q All right. I believe I understand your point
21 about how Mr. Kabatt's study does not really look adequately
22 to the future. But now I want to ask you a question about
23 looking to the past. I thought I heard you say the
24 following, and I want to know if you agree with this
25 proposition or not. Looking at the past, at the time when

1 the barriers were enacted in the community around 1990 or
2 so. The situation with regard to the time comparison that
3 Mr. Kabatt did very recently would have even shown, perhaps,
4 at least as fast or faster a trip along the blue route than
5 it does today.

6 A Absolutely.

7 Q And therefore, the fact that traffic barriers were
8 put in suggests to you that there were other reasons to be
9 concerned that are not taken into account in his study. Is
10 that correct?

11 A Yeah. Yeah. Right. It's like -- it was sort of
12 common sense, like I said, you know. Let me just say one
13 thing. So, what happened was we got that traffic plan.
14 When I first came here in 1989, they were going to build a
15 mall anchored by JC Penney. So, at that point, that's what
16 we worried about. That mall fell through, and Silver Spring
17 had nothing. That downtown was nothing.

18 At that point, they just said, why in the world
19 are we building this traffic plan. I believe that's when
20 they were building the traffic plan, and then along came --
21 this is what I was saying about the future. Along came 1996
22 and they started talking about the American Dream. Now, the
23 correct estimate for the number of cars was 70,000, 69,700
24 or something you look on the web, roughly 70,000 one way
25 trips per day. So, I remember thinking thank God we have

1 the traffic plan. I'm not even sure it's going to be
2 enough. But, then the American Dream.

3 So, it's like these, sort of, you know, it's kind
4 of, well, we can't tell the future but it's, it was like
5 extreme. We went from almost nothing to the possibility of
6 70,000 one way trips a day, and then, you know, well, the
7 American Dream fell through. No private investor is willing
8 to believe this thing that it was doable and it fell
9 through. Then we had nothing for a while.

10 Then we got the thing we have now which is kind of
11 modest. It's nice. We have the Whole Foods and the stroll
12 at Snyder's. We have the development, you know, in the
13 nice, the restaurants in Ellsworth. It's kind of an in
14 between type model. Somewhere between nothing and -- so,
15 but I agree. This is sort of -- I wanted to make the point
16 that, you know, you can't predict the future. I mean this
17 traffic, you know, could just increase. Boom. Like that.
18 I don't expect that. I think it's just going to build more
19 and more and steadily go up.

20 Q Thank you.

21 MR. BROWN: That's all I have.

22 MS. ROBESON: Now Mr. Harris.

23 CROSS EXAMINATION

24 BY MR. HARRIS:

25 Q Thank you, Mr. Millson. I certainly appreciate

1 your comment that the only thing that worries you is the
2 traffic. That's the good news, I guess. But, I want to ask
3 you about the traffic issues. First of all, I don't know if
4 you heard Mr. Kabatt -- you mentioned that his travel time
5 studies were done on a few trips. Did you hear him --

6 A I didn't say that at all. I have no idea how many
7 trips --

8 Q Okay. That's fine.

9 A I did a few trips.

10 Q I thought I heard you say that just --

11 A No. I didn't say that at all. I have no idea.

12 Q Okay. That's fine. Let's turn, then, to -- I
13 think you were just testifying now that the traffic
14 restrictions were first proposed in 1989, I think.

15 A I know it was 19 -- I'm not sure. Sometime in the
16 -- it might have been 1990. It was the early 90s.

17 Q Okay.

18 A I should have looked up those dates. I didn't.
19 I'm sorry.

20 Q And I think you mentioned at that time Silver
21 Spring redevelopment was being proposed and that you had
22 heard about the Mall of America that might generate --

23 A That's 1996. Mall of America is 1996.

24 Q 1996. Okay.

25 A That came after the traffic plan was in place.

1 Q Okay. So, the traffic plan was instituted because
2 of anticipated development in Silver Spring and then you say
3 great thing that we thought about it because when you heard
4 about the Mall of America, that was going to be 70,000
5 trips --

6 A Yeah.

7 Q -- which was really going to make it necessary.
8 Is that right?

9 A Absolutely. But that was insanity. Right. They
10 couldn't, they couldn't handle 70,000 trips, you know, no
11 matter what. But, yes. All I did was say, I sort of said
12 thank God but I don't even think this is enough. All right?

13 Q Okay. In the end, the development of downtown
14 Silver Spring was much more modest and much more
15 neighborhood oriented than the Mall of America, 70,000
16 trips.

17 A Well, yeah. Yeah. The Mall of America was
18 insanity. Right? That was like --

19 Q In terms of the whatever cut-through traffic may
20 have existed in -- well, it appears to me that the cut-
21 through traffic was more of an issue of anticipation from
22 downtown Silver Spring development than it was anything that
23 was a result of that because the development of downtown
24 Silver Spring didn't occur until the mid to late 90s.

25 A Well, that's sort of the puzzle because I told you

1 like in, like 19 -- when I arrived, every morning from 8:00
2 to 9:00 there would be a steady stream of cars. I think
3 they were coming from east Silver Spring. A steady stream
4 of cars going up Springvale, turning right on Ellsworth. I
5 think Peter Perenyi -- see, Peter Perenyi interrupted this
6 traffic as Ellsworth traffic. I thought it was Springvale
7 traffic. So, there are people, I think, coming to Silver
8 Spring up -- I can't understand it. All I can tell you is
9 what I saw. Okay? So, a steady stream of cars from, 8:00
10 to 9:00 going up Springvale. Right? Towards, you know,
11 what you call west. Right? And then going -- they would
12 turn on Ellsworth and I guess go out to the beltway. I
13 don't know here they were going and then at 5:00, 5 o'clock,
14 the stream would be reversed. Now --

15 Q The stream would be southbound on Ellsworth in the
16 evening?

17 A In the evening it would be southbound, and then it
18 would turn left on Springvale. Right? And head toward east
19 Silver Spring.

20 Q And in the morning, it would be northbound on --

21 A Exactly.

22 Q -- on Ellsworth.

23 A Ellsworth. So, it'd be east, westbound on
24 Springvale.

25 Q Okay. But it isn't the peak flow on Colesville

1 just the opposite? Isn't the peak flow --

2 A Yeah.

3 Q -- Colesville inbound in the morning and outbound
4 in the evening?

5 A Yeah. I'm sure this wasn't caused by Colesville.

6 Q Okay.

7 A I mean, my overall surprise when I started doing
8 this was that Colesville didn't seem like that much of a
9 problem. I remember I came in here I was talking about
10 Colesville when I first started off. It's very strange
11 because Colesville is awful to drive on.

12 You know, if you go further down toward the Blair
13 Plaza, you know, you come out of the Blair Plaza? That
14 stretch, you know, you're just waiting forever, and if you
15 go past Mrs. K's and you start driving, you know, further
16 along, you know, it gets really, really bad also.

17 But for some strange reason, that one block, which
18 for my arguments I wanted to be bad, wasn't so bad. I mean,
19 for one thing the divided road starts there. So, that
20 explains why going toward Blair Plaza it's going to be
21 worse. But, it was very strange to me. Like, suppose I
22 want to drive to Home Depot, you know, up there, you know,
23 what's that Briggs/Cheney, all that kind of stuff. You
24 know, you sail along for a few blocks at rush hour and all
25 of a sudden, it gets really slow.

1 Q Let's return to the traffic in the neighborhood.

2 A Yeah.

3 Q You mentioned that --

4 A Yeah.

5 Q -- you know, on some occasions, you -- I wasn't
6 clear whether you either did or do observe cars in the
7 neighborhood. There's no way that you know whether that car
8 is one of the neighbors who lives there or somebody outside
9 of the neighborhood that would be considered a cut-through
10 traffic. Is there?

11 A You mean, what I was seeing in 1990:

12 Q Yes.

13 A It couldn't really have been a neighbor because,
14 see, I'm more or less at the extreme southeast corner of the
15 neighborhood, and these cars in the morning were coming from
16 points even more southeast. Of course, I'm kind of on the,
17 sort of the bottom part of the neighborhood.

18 Q Okay.

19 A And these cars were -- you see what I mean?

20 Q Right.

21 A So, they couldn't really come from the
22 neighborhood because all the neighborhood was off to the
23 right and above, you know.

24 Q And with respect to that movement, there's no
25 evidence that this development, itself, will add any --

1 A I agree completely with that. Otherwise, I would
2 have been talking about this from the get go.

3 Q All right. Okay. With respect to the Citron
4 Apartment that's being proposed, wouldn't you agree with me
5 that -- you were discussing the p.m. traffic flows and
6 suggesting that that was going to potentially congest Cedar
7 Street and Springvale.

8 A No, a.m. I'd just as soon -- why not -- let's say
9 a.m.

10 Q Well, that's what I want to correct. You said
11 p.m.

12 A Well, then I made a mistake.

13 Q Yeah. Okay. That makes more sense. But, in the
14 a.m., wouldn't most of those, to the extent those people are
15 driving and not taking transit, wouldn't they be going down
16 Ellsworth towards Georgia more than likely towards the job
17 center and D.C. and not out Wayne or not out Cedar to
18 Colesville?

19 A Well, you know, I don't know how many people are
20 going to be going to the beltway. You know, before, like I
21 said, in my neighborhood, you know, there's a lot of jobs,
22 you know, that require taking the beltway, right, along the
23 270 corridor, you know. Some go to Virginia. Again, I
24 can't, you know, it's the same problem. I can't predict,
25 you know, these people coming out of the apartment whether

1 they're going to do it your way, my way. Some of them are
2 going to do it my way, some are going to do it your way. I
3 don't know what the splits going to be.

4 Q Okay. I certainly appreciate the fact that you
5 can't predict it. I can't either. I'm not an expert on
6 that but we did have a traffic expert but I am interested
7 in, you know, understanding where -- well, strike that. I
8 think you testified in the first round of hearings that
9 there is not a cut-through traffic problem today. Is that
10 correct? They were quiet streets.

11 A With the plan, absolutely.

12 Q And despite any traffic growth that might have
13 occurred on Colesville Road over that 20 years, the plan has
14 still held up. The restrictions have still been effective.

15 A I agree with that.

16 Q So, the traffic growth hadn't affected that.

17 A Remember, there's this sort of long hiatus.
18 There's was a, you know, nothing really happened. I know
19 when Whole Foods came in. Right? But there's, you know,
20 there's nothing in Silver Spring from 1990, when I came
21 here, until, until -- we went through '96. The American
22 Dream fell apart, and then I don't know when they built the
23 Whole Foods. What was it? About 1999 or something? I
24 don't know when it was.

25 Q I don't remember.

1 A So, nothing -- Silver Spring was sort of --
2 downtown, central business, was sort of a desert for 10 of
3 those years.

4 Q But, over that 20 years --

5 A Yeah.

6 Q -- the traffic restrictions have worked.

7 A So, my point is it's more like 10 years. Right?

8 Q Okay.

9 A I agree. I agree completely with what you're
10 saying but you assume -- you understand my point, too.

11 Q Okay. And I think you would agree with me that --
12 well, do you obey the traffic restriction signs in the
13 neighborhood?

14 A Essentially. Since I was in on the traffic
15 protection plan. But there is one, I have to confess.
16 Almost all the time and almost all of them. There's one
17 little thing I do which I shouldn't.

18 MS. ROBESON: I might have to strike some of this
19 from the record.

20 MR. MILLSON: Yeah. Please. Because I don't, you
21 know, I don't want somebody to knock on my door and --

22 BY MR. HARRIS:

23 Q And so, to the extent that others like you follow
24 the signs, and I think that's been the evidence, that would
25 be true five years from now as it is today.

1 A I know where you're going. Yes. It would.

2 Q See, with respect to the purple line, I'm not
3 familiar with the engineering for that. But, I'm not aware
4 that it's going to remove any lanes on Wayne Avenue. Do you
5 know to the contrary?

6 A Well, I don't. I mean, I'm just again using
7 common sense. Either you're going to have, maybe not a -- I
8 don't know what they're going to do because you are going to
9 have a train going down the middle of the road. Right?

10 Q I don't know that it's going to be a train. Has
11 that been decided?

12 MS. BARR: Yes.

13 THE WITNESS: Yeah. It's like on a -- yeah.
14 Yeah. I think so.

15 BY MR. HARRIS:

16 Q Okay.

17 A It was supposed to have been the subway. Of
18 course, they gave that up because it was too expensive. So,
19 it's obviously, unless they widen the road, there's less
20 room. Right? You have to deduct the width.

21 Q Yes.

22 A Now, of course, you know, maybe, I don't know how
23 they're going to do it but it seems fairly reasonable to
24 think there's going to be less room, and I doubt if they're
25 going to widen the road because that would, you know. Maybe

1 they are but I doubt it.

2 Q There's not a traffic problem on Wayne Avenue
3 today, is there?

4 A No. No.

5 Q No. It's pretty easy.

6 A Yeah.

7 Q Back to the signs. If the evidence that we
8 present shows that DOT can enforce those signs that would be
9 put up at Chelsea Court here, would you obey those signs as
10 well?

11 A Yeah. I'd obey them anyway, you know. But, I
12 don't know. I mean --

13 MS. ROBESON: Except for that one little one.

14 THE WITNESS: That one little one. Yeah. I
15 shouldn't have been so honest.

16 MR. HARRIS: I think that's all the questions I
17 have, Mr. Millson. You are a very honest guy.

18 THE WITNESS: Thank you.

19 MS. ROBESON: Mr. Brown, do you have anything else
20 for Mr. Millson:

21 MR. BROWN: Just a couple of follow up questions.

22 REDIRECT EXAMINATION

23 BY MR. BROWN:

24 Q Mr. Millson, isn't it the case that, at least at
25 present, there's an intention for the trains along the

1 purple line in this area to share lanes with traffic?

2 A See, I don't know that --

3 MR. HARRIS: Objection.

4 THE WITNESS: But they have to. I mean, how can
5 they not do it? That's what I don't understand.

6 MS. ROBESON: Stop. Stop. Stop one minute.

7 MR. HARRIS: Objection. He just answered my
8 question that he didn't know what it was going to be.

9 MS. ROBESON: I think he's saying -- he just said
10 he didn't know what it was going to be.

11 MR. MILLSON: It's a little stronger than that. I
12 mean, it's like common sense says there will be. That's the
13 only thing I'd like to get in.

14 MS. ROBESON: Okay. Fine.

15 BY MR. BROWN:

16 Q Do you know whether or not Wayne is a busy road
17 particularly up at the area where Wayne and Dale intersect?

18 MS. ROBESON: If you know.

19 MR. MILLSON: I don't know. I mean, I come home
20 and school there, you know. So, I don't know. I don't
21 know.

22 MR. BROWN: That's all.

23 MS. ROBESON: Okay. Mr. Harris, how long? Are
24 you thinking 15 minutes or -- you had asked for --

25 MR. HARRIS: Oh. For a break.

1 MS. ROBESON: Yeah.

2 MS. ROBESON: No. Just five minutes is all we
3 need, really.

4 MS. ROBESON: Okay. Okay. We're going to --
5 well, we'll be back at 10:30.

6 MR. HARRIS: Okay. Thank you.

7 (Brief recess.)

8 MS. ROBESON: Okay. We're back on the record.
9 Mr. Harris?

10 MR. HARRIS: The applicant, well, we'd like to
11 call Mr. Thakkar back for some rebuttal testimony.

12 MS. ROBESON: All right.

13 MR. HARRIS: Mr. Thakkar --

14 MS. ROBESON: Go ahead.

15 MR. HARRIS: Go ahead, Chair.

16 MS. ROBESON: I was just going to remind him --

17 MR. HARRIS: Oh. I'm sorry.

18 MS. ROBESON: -- you're still under oath.

19 MR. THAKKAR: I'm Aakash Thakkar for the record,
20 with EYA. So, what I would like to do today is provide the
21 bulk of our rebuttal testimony, and what I'd like to do is
22 sort of walk through each of the issues in the remand, a
23 couple of the other issues that were addressed as well. So,
24 pardon me in advance. I do want to be comprehensive, and
25 so, I'll kind of take my time walking through each of these

1 issues.

2 MS. ROBESON: That's fine.

3 MR. THAKKAR: In addition to that, I think the way
4 we are coming at this is we want to be solutions oriented,
5 so not just providing rebuttal testimony. But to the extent
6 that we heard issues that we feel we can adequately address,
7 we'll try to do that through a number of binding elements.
8 And I was originally going to start with a historic setting
9 but what I think I'm going to do is just jump into the
10 traffic issue as sort of one of the -- the road alignment
11 issue, I should say, in regard to the remand.

12 MS. ROBESON: Okay.

13 MR. THAKKAR: So, a couple of thoughts just with
14 regard to Mr. Millson's testimony and rebuttal to that
15 testimony and this discussion around 2020 and sort of what
16 will the traffic be then.

17 MS. ROBESON: Uh-huh.

18 MR. THAKKAR: And I think a part of the discussion
19 that we haven't had much of because it's maybe not narrowly
20 focused within the remand is from where, you were getting at
21 this, where is Silver Spring going? Where is the county
22 going? And if you look at a building like the Citron in
23 particular, the 220 unit building just to the south of
24 Chelsea Court. I don't have any evidence on this but my
25 suggestion is the reason it's being built and the type of

1 folks that it will cater to will be largely folks who do
2 want to walk to everything that Silver Spring offers.

3 One of the reasons that we're building here as
4 well, and beyond that, I guess, I'd suggest that looking at
5 2020, eight years from now, there is, in my view, and I'm
6 sort of evidence of it, I'm probably on the older end of it,
7 but a cultural shift, and I can just give you some
8 anecdotes.

9 You know, we've got a couple of younger folks in
10 the office, and they literally, you know, don't own cars or
11 won't drive them, and when they do need to drive, they zip
12 car, and our profession is one where actually you need a
13 car. So, it's kind of frustrating for me sometimes because
14 we actually need them to have cars but they are, pardon my
15 French, you know, hell-bent on not using cars and living in
16 locations exactly like this one where, you know, they'll
17 have that opportunity not to use their cars. I think the
18 purple line helps that.

19 So, what I'd suggest is there's no evidence that
20 Colesville, in particular, would get worse, maybe to the
21 contrary, with the additional infrastructure that the county
22 and the state and, you know, the federal government are
23 investing in and this cultural shift which is where the
24 county's going, the types of folks that are attracted to
25 this area and their modes of transportation. I'd suggest

1 that, you know, there certainly isn't evidence pointing us
2 in that direction. We certainly feel it's the opposite.

3 Mr. Youngentob, as you may recall, provided some
4 survey, some surveys of different EYA communities the last
5 time around, and it was pretty clear that in our communities
6 and folks who are buying in our communities might be a touch
7 older than those living in the Citron group of the type of
8 home and stuff, but nonetheless, those folks who bought
9 close to Metro, bought for that reason, intended to use it,
10 you know, whenever possible as opposed to cars. So that --

11 MS. ROBESON: Now, I got to ask you this.

12 MR. THAKKAR: Yes.

13 MS. ROBESON: Why did you put two car garages in
14 your units, then?

15 MR. THAKKAR: It's a good question because as I
16 said, our folks are maybe a little bit older and today, the
17 market still -- the markets, well, let me back up and say
18 it's a regulation. So, you actually have to, and I'm not --
19 it's interesting because I've been thinking this. A lot of
20 our folks actually probably prefer one car garages. I don't
21 know that you can, you know, get around that regulation.
22 So, in many of our communities in the district, for example,
23 we offer either/or.

24 MS. ROBESON: Oh. You mean the parking
25 requirements require you to do that.

1 MR. THAKKAR: The parking requirements. And so,
2 we always get into this tussle because we like to offer the
3 option. Right? What happens is when we offer the option,
4 many people will take it and have a one car garage.

5 The concern from the community at hearings like
6 this on all of our projects is, we have the planners saying,
7 well, if you live within walking distance, you know, one car
8 garages are less parking, and you have the community saying,
9 well, to the extent that you guys are wrong, and folks will
10 have cars, there will be spill over parking that will spill
11 over entire communities.

12 So, I think, we've actually have this discussion
13 with Jim and Carrie the first time around and she said, you
14 know, I hear kind of both sides. I like the two cars
15 because that gives the community comfort that the spillover
16 won't be necessary, and kind of that's where we ended up.
17 So, I don't think we're even allowed on this particular
18 project to offer anything less. You know, I can ask my
19 counsel if there's anything different but from what we've
20 looked at, we don't even have the option of offering the one
21 car. So, just my thoughts on Mr. Millson's testimony.

22 To the issue at hand, I think, you know, we've all
23 agreed that cut-through traffic is the issue from the
24 neighborhood standpoint with regard to this. I think we
25 agree that there shouldn't be cut-through traffic and the

1 neighborhood should be protected. I just want to be clear
2 on that. We also agree, I think, that cut-through traffic
3 today is not a problem because people generally obey the
4 signs, and by that I mean, you know, I know there is a
5 physical barrier right here. This is Ellsworth where the
6 road narrows down from two lanes to one lane, and you can
7 only come into the CBD. However, you could, you know,
8 there's plenty of room, obviously, if you wanted to break
9 the law and go up the do not enter and cut-through, you
10 could do that, save the --

11 MS. ROBESON: It blocks you north. Just for the
12 record --

13 MR. THAKKAR: It blocks you north.

14 MS. ROBESON: -- it's about mid-block, it blocks
15 you northbound.

16 MR. THAKKAR: Correct. Correct.

17 MS. ROBESON: Right.

18 MR. THAKKAR: Very similarly, you know, I've
19 driven this a lot myself, you know, you can't make the left
20 off of Cedar onto Pershing. So, you need to come around
21 just to get to the Chelsea School. If I or anybody wanted
22 to, you could make that left as well and cut-through the
23 neighborhood. I think people don't because of the signage,
24 and I think you've heard us make the case that we believe
25 that the signage on this property will be no different. So,

1 there are cut-through, there are cut-through options today.
2 People don't cut-through because of the signage.

3 Since we met last time, we kind of said, okay. We
4 hear this concern around, you know, how will it be policed?
5 And I think what we've shared with you is we thought that
6 the roads, could, in fact, be policed. And so, just to
7 refresh, section 31-2 of -- what is this?

8 MR. HARRIS: County code.

9 MR. THAKKAR: County code.

10 MS. ROBESON: That's the county code.

11 MR. THAKKAR: County code essentially says, I will
12 summarize, that the county executive has the authority to
13 police private roads if he so chooses, in short. So, what
14 Ms. Bar did for us is contact Fred Lees, and I have an
15 email, and I'd like to submit it for -- it's very brief, and
16 I'll summarize it if you tell me the best way to approach
17 it.

18 MS. ROBESON: Well, why don't you just --

19 MR. THAKKAR: Summarize it?

20 MS. ROBESON: -- summarize it.

21 MR. THAKKAR: Okay.

22 MS. ROBESON: Yes.

23 MR. THAKKAR: Fine. So, I think, you know, the
24 good news here is we agreed with the community that this
25 should not be a cut-through, a cut-through. So, what we did

1 was --

2 MS. ROBESON: Oh. I see. I'm sorry.

3 MR. THAKKAR: Yeah. I'm just leading into it.

4 So, what we did was Ms. Bar contacted Fred Lees of the
5 Department of Transportation, and he's the lead traffic
6 engineer in operations divisions. We understand that he's
7 the person that can advise on issues like this, and in
8 short, Ms. Bar says that, you know, we want to be able to
9 have the police police these streets in the same way that
10 they police the streets in the surrounding community, given
11 the broader policy that the county has in place for this
12 region of Silver Spring, and his response to her, in short
13 was, I'm quoting, this is something we could do for the
14 Chelsea School but he says that we periodically write formal
15 traffic orders to formalize regulations on private property.
16 It is usually stop signs or turn restrictions where they
17 come onto public streets but not always. This is something
18 we could do for the Chelsea School site. That's the entire
19 response.

20 And I think, you know, we maintained even before
21 this that we thought the county executive would be
22 supportive given, you know, his and their concern over cut-
23 through in this area, and I think we have strong evidence
24 now that should this move forward that, for example, if you
25 have a sign on Ellsworth, again, mid-block saying, you know,

1 we'll have the private no trespassing signs. You can also
2 have a no right turn which is from the public road and that
3 would be just as policeable as this do not enter going
4 north. Similarly, if you, again, break that law, come
5 through the site, we have no left turn in the pork chop and
6 the police could enforce that as well.

7 So, it just gave us comfort because, again,
8 there's no disagreement between us and the community that
9 this is something that we want to ensure that there's
10 protection on. So, to that end, we want to offer a binding
11 element.

12 MS. ROBESON: I am going to -- Mr. Brown, have you
13 had a chance to review what --

14 MR. BROWN: Yes, ma'am.

15 MS. ROBESON: Mr. Gurwitz, do you want to take a
16 minute?

17 MR. GURWITZ: I would, please.

18 MS. ROBESON: Okay. I'm going to mark this as
19 Exhibit 342 which would be proposed binding element related
20 to enforcement of traffic restrictions.

21 (Exhibit No. 342 was marked
22 for identification.)

23 THE REPORTER: What number is it going to be?

24 MS. ROBESON: 342. Mr. Brown, do you have an
25 objection?

1 MR. BROWN: No objection.

2 MS. ROBESON: Okay. Mr. Thakkar, why don't you go
3 ahead?

4 MR. THAKKAR: Should I read this into the record
5 or summarize it?

6 MS. ROBESON: Sure.

7 MR. THAKKAR: Okay.

8 MS. ROBESON: Yes.

9 MR. THAKKAR: I'll just read it into the record.
10 The homeowner's association documents for the project will
11 provide authorization for police enforcement of all traffic
12 restrictions and related signage regarding entry to and exit
13 from the site. Upon site plan approval, applicant will
14 request an executive order (formal traffic order) which is
15 what we believe it's called per Mr. Lees for county police
16 enforcement of entry and exit restrictions.

17 MR. ROBESON: Okay. Thank you.

18 MR. THAKKAR: So, in summary, you know, we'd like
19 to think that the combination of everything we're doing with
20 this new evidence with regard to the policing of what we're
21 doing, we've got the pavers as you suggested, and those are
22 things that we have mitigated that issue.

23 I think the other important point is I think we
24 all agree and the neighbors did as well that even without
25 the policing, folks follow the signs as they are today, and

1 folks, most of us, anyway, would certainly follow the signs
2 without policing. The policing is that much better.

3 The next issue I'd like to cover is there's some
4 testimony around Mr. Bulgrami, K.B., as we call him, the
5 traffic engineer.

6 MS. ROBESON: Yes. Can you explain who he is?

7 MR. THAKKAR: Yes. Okay. So --

8 MS. ROBESON: Besides K.B.

9 MR. THAKKAR: K.B. So, he's Karshid Bulgrami.

10 MS. ROBESON: Uh-huh.

11 MR. THAKKAR: That is his name, and he works for --
12 -- he is a traffic engineer that works directly for Greg
13 Leck. You've heard the name Greg Leck.

14 MS. ROBESON: Oh. Yes. I know who Greg Leck is.

15 MR. THAKKAR: Right. So, he works directly --

16 MS. ROBESON: So, he's with the Montgomery County
17 Department of Transportation.

18 MR. THAKKAR: Department of Transportation.

19 Sorry. And he works for Greg, and he's kind of the one that
20 deals with all of us on a day-to-day basis and then takes
21 something to Greg and says hey, Greg. This is my
22 recommendation. You know, look. What do you think? And
23 then Greg, as you've seen, issues directives to whomever.

24 MS. ROBESON: All right.

25 MR. THAKKAR: Probably the board in this case or

1 planning staff. So, you know, there's testimony with regard
2 to meetings with Mr. Bulgrami where he wasn't comfortable
3 with the road alignment, and subsequent to that, we provided
4 evidence that DOT, Greg Leck, and Mr. Bulgrami are, indeed,
5 comfortable with the road alignment as it is today.

6 Recall that the issue was that the county has a
7 guideline that, in short, you have to be, well, not you have
8 to be, you should be, 100 feet from your intersection to the
9 closest adjacent intersection, and at the point in time, I
10 think, when the conversations were had with Mr. Bulgrami and
11 the community, we hadn't really walked -- you know, we'd
12 gotten an email saying, hey, we recommend that this change
13 from where the road is to the alley. We hadn't had a chance
14 to really walk him through why the road is where it is and
15 why we think it's okay from a safety, efficiency, et cetera
16 standpoint.

17 So, the first question they asked us is there
18 adequate site distance and, you know, there is adequate site
19 distance in this location. You know, the second issue is
20 the volume, and I think what got Greg Leck and Mr. Bulgrami
21 comfortable is that the volumes from this development would
22 not be significant and therefore, particularly with their
23 recommendation of the right in and right out which further
24 reduced volumes, that this particular location, although it
25 isn't 100 feet from that intersection, would be completely

1 acceptable, safe, and efficient.

2 So, I just wanted to provide some testimony as to
3 the why. We've had conversations. Mr. Kabatt, you know,
4 provided, and Mr. Stires provided information with regard to
5 site distances and traffic volumes, and the result of that
6 conversation was the acceptance of the intersection as it is
7 today.

8 MS. ROBESON: Is Mr. Kabatt going to testify? I
9 just had a question. I can't remember off hand in your trip
10 distribution given to you by park and planning staff. Well,
11 don't we want --

12 MR. HARRIS: We weren't going to have him testify
13 but I can pull out the exhibit if that would help you?

14 MS. ROBESON: No. I'll look it up

15 MR. HARRIS: All right. Okay.

16 MS. ROBESON: Go ahead, Mr. Thakkar.

17 MR. THAKKAR: I believe with regard to this access
18 point, we're talking about off of Springvale, it's something
19 along four to five trips in the morning and four to five
20 trips in the evening.

21 MS. ROBESON: Okay.

22 MR. THAKKAR: For that access point. So, again,
23 in sum, we had that conversation. I think what they needed
24 from us was further facts, and they got those facts and
25 that's what got them comfortable.

1 The last question that I'd like to address is, you
2 know, there's been a lot of testimony around did we look at,
3 you know, we said the last time around that we would explore
4 a cul-de-sac. As you know, we did explore a cul-de-sac.
5 So, you know, why do we think this is most preferable? So,
6 let me start with our contention always was that we didn't
7 think we would add to cut-through traffic, and we hope that
8 we've provided evidence that we won't. So, it's not as if
9 we didn't pay attention to that. It was foremost in our
10 minds.

11 But, then the issue, you know, becomes as you
12 really study it, what works the best. Mr. Youngentob did
13 provide some testimony on this. You've heard us talk about
14 less connectivity, car connectivity. One of the major
15 issues, and I'm going to actually just pull up the Doggett
16 plan as well because it does show one access point. As Mr.
17 Youngentob testified, there's significant grade difference,
18 you know, throughout the site from, let's say, Ellsworth to
19 Pershing, and whether it be -- we'd suggested this doesn't
20 work, that you would need something more fulsome for turn
21 around, and we talked to fire et cetera, and I say this on
22 the Doggett plan.

23 If there's a T junction that's shown and we've
24 looked at that and, you know, it didn't work from a fire
25 turn around standpoint, and also, I guess, the more

1 important issue is the grade and the historic setting. And
2 so, I say that because there's some trade-offs and we're
3 trying to sort of pull this whole thing together and make it
4 work and let's say if you do look at a cul-de-sac, for
5 example, number one, the grades, you know, really between
6 here and as you get close to the house, they're very
7 different. So, as Mr. Youngentob testified, you could have
8 a cul-de-sac with, you know, a 10 foot grade difference from
9 what's above it.

10 So, number one, let's look at our plan for a
11 second. If you could just imagine drawing a circle there,
12 you'd, one, get a lot closer to the historic setting, and
13 one of our key goals was to stay as far away from that as
14 possible. Two, not only would you be closer but you'd kind
15 of eat into it and have this odd grade difference between
16 the historic setting and the cul-de-sac, and so that is one
17 of the key reasons that, you know, we just didn't feel it
18 worked practically speaking.

19 When we testified to it the first time around, we
20 hadn't studied it in that detail. We asked the engineers to
21 look at it. We were open to it and because of what it did
22 to the historic setting, because of what it did to
23 connectivity and because of the grade and, frankly, as we've
24 testified, you know, planning staff was less supportive.
25 Their preference, I should say, not that they would rule out

1 by any means one access point, was, you know, connectivity
2 to Springvale.

3 So, we did look at it, and we kind of balanced the
4 competing interests, and thought at the end of the day that
5 assuming the cut-through traffic wasn't a problem which we
6 don't think it is, that the historic setting and how that
7 worked for the community, how it worked for the house, was
8 sort of the defining element and more important.

9 With that, I will then turn to the issue of the
10 historic setting. So, I guess I will apologize a bit for
11 our counsel. You know, that was a long cross examination of
12 Ms. Ward, and I say that because, you know, we are the
13 client and so, yeah, he does, you know, obviously he works
14 with us in terms of doing what he does but, you know, this
15 issue may be unlike the cut-through traffic and unlike the
16 density and massing, has been difficult for us because, as I
17 think you know, we kind of see this as black and white and
18 there's clearly subjectivity and density and massing, and
19 there's clearly subjectivity with regard to road alignment
20 and what works but this one has been a tough one for us
21 because I think we find ourselves in a position of having
22 sort of a burden of proof of proving that the master plan
23 intends what it says, in essence. I've answered that and
24 that's what we're -- we believe it intends what it says, and
25 we just kind of wanted to walk through our thoughts on that.

1 I would like to go into some detail because this is our
2 change to offer rebuttal with regard to Ms. Warren's memo
3 because I think that's really the crux of this discussion.

4 So, I want to say as others have that we think the
5 memo is very thorough and very professional, and our
6 concerns with it have nothing to do with that thoroughness
7 and professionalism. The concerns are, and through no fault
8 of Ms. Warren at all, it's incomplete just because it is
9 very hard -- obviously, in our opinion, it's incomplete
10 because it's very hard to put together facts, you know, that
11 happened so long ago and also document everything that
12 everyone was thinking or doing at any point in time
13 particularly that long ago. And so, our concern is that,
14 you know, that at the end of the day, we don't think the
15 evidence substantiates the conclusions. We think it's
16 inconclusive in terms of what the intent of planning board
17 and then counsel was.

18 I'd also like to say, you know, in no
19 circumstance, you know, regardless of the interpretation of
20 Ms. Warren's memo and the facts, I guess we don't see where
21 any of the documents ever said that the setting, you know,
22 would be 37,056 square feet if the special exception is
23 approved and then at some later date, and Mr. Harris used 12
24 years but at any point in time, if that were to change that
25 somehow it would revert back to the one four acres. So, our

1 contention is there's a dual recommendation in the appendix
2 of the master plan. We don't think that that is the
3 controlling element of the master plan and the body, but
4 assume for a second that you believe that the appendix
5 controls, which we don't, even in that case, we're having a
6 real hard time seeing how that says anything other than, if
7 approved, 37,056 period, full stop, as opposed to if
8 approved, 37,056 and then if the situation changes after
9 approval, it reverts back. So, that's sort of our overall
10 take on the language as it stands.

11 With regard to Ms. Warren's memo, I just want to
12 point out a couple of things, and it relates -- I think you
13 asked a couple questions, Ms. Robeson, about the time line.
14 So, I guess I'll start with Exhibit 324N, a March 19, 1999
15 memo. Let me just pull that out. From Nancy Sturgeon.
16 It's Exhibit 14 within Ms. Warren's --

17 MS. ROBESON: Submittal?

18 MR. THAKKAR: -- submitted memo. So, on page 4 of
19 that exhibit, 324N, this is a memo from Nancy Sturgeon to
20 the Montgomery County Planning Board, and it discusses a
21 number of goings on with regard to the planning board and
22 the purpose of the memo is work session 1 for the north and
23 west Silver Spring public hearing. And on page 4 of that,
24 it walks through the agency comments, the historic
25 preservation, at the bottom of the page, historic

1 preservation commission recommends designation of these
2 three properties and then with regard to the Chelsea School
3 or the Riggs-Thompson House in particular, it has this two-
4 fold recommendation, and I think we're led to believe at the
5 bottom of that paragraph, if you will or section, that both
6 page 33 and appendix D of the master plan are to contain
7 this dual language. So, I think that's where, you know, the
8 situation was at that point in time.

9 If you then jump to Ms. Warren's Exhibit, I
10 believe, 324J, and that's her Exhibit 11, and that is
11 another memo from Nancy Sturgeon about six months later,
12 October 28, 1999 to the Montgomery County Planning Board
13 again, and along with that memo is attached --

14 MS. ROBESON: I think that's 324K.

15 MR. THAKKAR: Sorry about that.

16 MS. ROBESON: No. It's fine. Go ahead.

17 MR. THAKKAR: 324K.

18 MS. ROBESON: I just corrected it for the record
19 so no one's, you know --

20 MR. THAKKAR: Okay. Now, in that memo and the
21 attached, well, what is called the November 1999 planning
22 board final draft, the language is change from the March 19,
23 1999 date, and when I say it's changed, it now no longer
24 contains what I'll call the dual recommendation in the body
25 of the master plan. So, what it says in that master plan is

1 the Riggs-Thompson House -- this is page 34 of that master
2 plan attached to Ms. Sturgeon's memo. The Riggs-Thompson
3 House is located on a 1.4 acre parcel. The environmental
4 setting is 37,056 square feet. A brick garage constructed
5 in 1930 is noncontributing to this resource. This resource
6 meets the criteria, and so on.

7 So, it appears that what has happened since March
8 to what is now October 28, 1999 is that there was a change,
9 and I think part of the contention that Ms. Warren made was
10 that that change occurred, and it was testified that there
11 was an unauthorized change made and therefore that the
12 planning board potentially wasn't aware of that change, and
13 I think that's where we have major disagreement because
14 that's a long period of time. Keep in mind that, you know,
15 Holy Names didn't want any designation. Chelsea School
16 wanted 37,056 as their special exception, and you know,
17 there were, I'm sure, and certainly there is, there is,
18 there are various memos and other such things between those
19 periods of time that Ms. Warren points to.

20 I guess what I'm saying is the fact that she nor
21 we could find any evidence that she was directed to do this
22 by planning board or that planning board, even if she wasn't
23 directed, that she didn't tell the planning board at some
24 point or, I guess thirdly, that they didn't read it even if
25 she acted in an unauthorized way and didn't tell them. That

1 to us is a really big leap because it's a long period of
2 time, you know, lots of things happen.

3 You know, we've been involved in master plans that
4 are machinations meeting with property owners and other such
5 things and we're, you know, that's where we have our most
6 substantive agreement as it relates to, disagreement, excuse
7 me, in terms of the planning board. You know, how can we
8 assume -- I think the reasonable assumption would be that
9 Ms. Sturgeon did her job and did, in fact, alert planning
10 board members to things that were important. I also think a
11 reasonable assumption is that the planning board members
12 would have, you know, read what they were then, eventually,
13 going to move on to the county council. It's very
14 important. It matters, and the only way I could see that
15 the opposite is true is if she wasn't directed. She also
16 didn't alert them, and they didn't read it. Those three
17 things would have had to have occurred for them to have been
18 okay with them then sending that document with the single
19 recommendation in the body to the county council. And so,
20 again, I think that's just where we have a really big
21 difference of opinion of sort of the conclusions based on
22 the facts that were presented to us and the research that
23 we've done as well.

24 So, assuming, you know, I think we all agree,
25 then, that the master plan that the planning board sent to

1 the county council did, in fact, have this body of the
2 master plan as the single recommendation and the appendix
3 that had if approved then 37, if not approved then 1.4
4 acres. So, that's what went to the county council. That
5 went to the county council in the January time frame of
6 2000.

7 So then I'm going to jump forward to Exhibit 15,
8 3240, I believe. It's in May. It's minutes, I think or not
9 minutes but maybe in the written transcript of a hearing in
10 which Mr. Elmendorf, the attorney for the Chelsea School, is
11 essentially sharing with the council, the full council now,
12 I believe. There are one, two, three, four, five, six,
13 seven, eight council members present on May 9, 2000, and Mr.
14 Elmendorf, in summary, is telling the council that he's
15 happy to report that about one month ago, in March 2000, the
16 Chelsea School did, in fact, receive their special
17 exception.

18 So, now you have a situation where the document
19 before the county council has the single recommendation in
20 the body, the dual recommendation in the appendix. As of
21 that March date, however, the special exception was
22 approved, and so, you know, what we'd suggest is that at
23 that point in time, the county council was well aware that
24 the special exception was approved and therefore, at that
25 point in time and then moving forward, there's no

1 inconsistency, if you will, between the body of the master
2 plan, 37,056 period and the appendix of the master plan,
3 37,056 if Chelsea special exception is approved. So, that
4 has now happened.

5 And so, again, what we'd submit is there was
6 additional discussion after that. There's a PHED committee
7 memo from Ms. Arthur subsequent to that point in time that
8 states that there's a dual recommendation in the body of the
9 plan but, in fact, there was not a dual recommendation in
10 the body of the plan since planning board submitted what
11 they submitted to council, there was always a single
12 recommendation in the body of the master plan.

13 And so, you know, in summary, there were a number
14 of points of time, PHED committee and then, again, there was
15 a memo from, and I won't get into a lot of detail about it
16 on July 20th to the county council requesting any revisions
17 to the documents. So, there's no PHED committee hearings
18 and then council hearings, full council, not full council
19 hearings, but communicate to the full council after the
20 Chelsea School got their special exception.

21 So, and we don't know this to be the fact but in
22 our minds, what is more likely is they got this document
23 with the single recommendation and then the Chelsea School
24 got its special exception, and they were all made fully
25 aware of that fact and so subsequent to that, it wasn't

1 their opinion that anything needed to change and there were
2 a number of opportunities where anything could have changed
3 because it is the will of the council that ultimately
4 prevails but our contention is that it all made sense, if
5 you will, at that point in time because the body was clear,
6 37,056 and the appendix said if special exception approved,
7 and it was.

8 So, that's sort of our take away, and again, in a
9 very similar case, you know, Mr. Harris, you know, did cross
10 examine to this effect that beyond that, I think, our
11 assumption, and I think it is not an unreasonable
12 assumption, is that given that the county council had the
13 facts about Chelsea and even besides that that them and
14 their staffs were knowledgeable of what was in the plan that
15 council sent up and would have made any changes to that plan
16 should they have felt that any changes were appropriate.

17 MS. ROBESON: What about the language that I think
18 Ms. Fielder pointed out? There's language in the plan --

19 MR. THAKKAR: Uh-huh.

20 MS. ROBESON: -- that says the reasons for the
21 designation are set out in the appendix. I'm paraphrasing.
22 But, it specifically incorporates the appendix.

23 MR. THAKKAR: Right.

24 MS. ROBESON: What do you say to that?

25 MR. THAKKAR: So, what I'd say to that is, and

1 again, you know, I shared with you that three years ago when
2 we started looking at this, we saw that as well, and we read
3 that to assume that, again, I mean, I understand there's
4 different opinions of this but we read that very clearly.

5 So, we said, let's assume that the appendix does have
6 some weight. We read it and we said -- and then we asked
7 Mr. Harris. Mr. Harris, just I want, I need to confirm
8 this. This is really important to this whole case. Did
9 Chelsea School get their special exception? He came back
10 and said they did, you know, back in 2000. We didn't go
11 through the intense research that Ms. Warren did but we, of
12 course, looked at that and just so you're aware, we had
13 these discussions with planning staff and historic staff
14 because we, you know, we looked at both and we said not
15 knowing what we know now, we just want to make sure that it
16 is, in fact, 37,056 and we trusted that both, you know,
17 planning staff and Scott Whipple and his staff, you know,
18 looked at it and said, you know, this is, you know, a
19 correct reading. Chelsea School got their special
20 exception. Based on our reading of that, based on our
21 discussions, you know, we moved forward into the process
22 like we did.

23 So, you know, we wanted just to provide rebuttal
24 with regard to that.

25 MR. HARRIS: One question on that.

1 MR. THAKKAR: Sure.

2 MR. HARRIS: Would you read -- I think the
3 sentence to which Ms. Robeson is referring is the first full
4 sentence in the paragraph on page 28 of the master plan.
5 I'm sorry. Not the first full, the third sentence there,
6 and would you read that for us?

7 MR. THAKKAR: The third sentence.

8 MR. HARRIS: On page 38.

9 MR. THAKKAR: Okay.

10 MR. HARRIS: Beginning with the word detailed.

11 MR. THAKKAR: Detailed evaluations of each site
12 prepared for consideration by the HPC, the planning board,
13 and the county council are available in the appendix.

14 MR. HARRIS: Okay. That doesn't say detailed
15 recommendations.

16 MR. THAKKAR: It does not. And, I guess, our
17 final point on this piece is that it's, again, been really
18 concerning to ask because we've kind of relied on a public
19 document and it's not even about this case. It's the
20 broader, I guess, implications of if you can't rely on, you
21 know, what is in the master plan, then how can a land owner
22 sort of function adequately without two or three years down
23 the road, you know, being in a situation like this.

24 So, just from a bigger picture standpoint, again,
25 the lengthiness of our testimony and cross is because we are

1 a bit shaken by the prospect of not being able to rely on
2 what we thought was kind of one of, frankly, the most
3 straightforward issues in this case. The other ones are,
4 you know, certainly ones that you can grapple with for a
5 while.

6 MS. ROBESON: Well, I think the citizens feel like
7 they are shaken because they couldn't rely on the master
8 plan recommendations. So, I guess the master plan, well,
9 the master plan, perhaps not with the boundaries of, well,
10 let me ask you this.

11 MR. THAKKAR: Sure.

12 MS. ROBESON: Aside from the dual recommendation,
13 is it your opinion -- do you believe that the rational for
14 the -- given this site plan --

15 MR. THAKKAR: Yeah.

16 MS. ROBESON: -- with the one point three to five
17 acres preserved --

18 MR. THAKKAR: Yeah.

19 MS. ROBESON: -- do you think that regardless of
20 whether a school -- it seems to me that the underlying
21 rational of the master plan was we're going to allow some
22 more flexibility to the school to develop the property
23 because it's going to be in a -- because there's going to be
24 a larger open space context.

25 MR. THAKKAR: Uh-huh.

1 MS. ROBESON: And that's why they said it's part
2 of a campus-like setting.

3 MR. THAKKAR: Right.

4 MS. ROBESON: And it seems to me that that was the
5 basis for the smaller recommendation.

6 MR. THAKKAR: Right.

7 MS. ROBESON: Can you argue that that rational
8 would still apply to this plan?

9 MR. THAKKAR: When you say this plan, do you mean
10 our plan?

11 MS. ROBESON: I mean the, yeah. The 12.5 plan.

12 MR. THAKKAR: Yeah. So --

13 MS. ROBESON: Because this is different --

14 MR. THAKKAR: Right.

15 MS. ROBESON: -- from your first plan.

16 MR. THAKKAR: Right. So, that's where, that's,
17 you know, you led me to where I was going.

18 MS. ROBESON: Oh. Sorry.

19 MR. THAKKAR: No. No. No. It's --

20 MS. ROBESON: I'm behind Mr. Millson, and I'm all
21 over the place.

22 MR. THAKKAR: Like I said, you know, I'm slower
23 sometimes. So, our thought is regardless of our reading or
24 their reading, frankly, we think our reading is accurate but
25 nonetheless, as Mr. Youngentob said, our goal is not to

1 quibble over, you know, what is right but actually, you
2 know, the whole idea behind when we say this plan, the EYA
3 R-T 12.5 plan is to provide that, as I think Mr. Iraola said
4 that prominent, you can call it campus-like, we'd call it
5 park-like setting, which in many ways at the end of the day,
6 in our view, is superior to even the original one point four
7 and predominately because although the Doggett plan did not
8 have any, excuse me --

9 MS. ROBESON: And by Doggett plan, this is the new
10 Doggett plan --

11 MR. THAKKAR: The new Doggett. Doggett 2.

12 MS. ROBESON: -- which is 314V.

13 MR. THAKKAR: Right.

14 MS. ROBESON: Son of Doggett.

15 MR. THAKKAR: Doggett 2, I call it. Yeah.

16 MS. ROBESON: I'm sorry.

17 MR. THAKKAR: So, this is the new Doggett plan
18 that I'm looking at. So, there is an ability subject to
19 compatibility to build in the north, you know, east area of
20 the site, and EYA's looking at what would be the best
21 setting for the house and frankly be more responsive to the
22 ZHE in terms of concerns of proximity of fronts of
23 townhouses to the historic house.

24 When we put forth this plan and the idea was
25 always that regardless of what, you know, the 37,056 or what

1 have you, we wanted to address the, as you said, sort of the
2 idea that the house should have a prominent setting, and
3 we'd certainly suggest if you look at the existing
4 conditions on the left, you know, there are a number of
5 noncontributing buildings, and they're all over whatever
6 setting, you know, you want to ascribe to this property.
7 It's not a pretty setting at all for the house.

8 So, what we tried to do and as Mr. Youngentob
9 said, we wanted to be practical. We wanted to put forth a
10 solution that made sense. What we found interesting was
11 that I think, and I'm not putting words in her mouth, that
12 Ms. Christianson said, she said she could live with it.
13 Right? And I think a number of the responses that we've
14 gotten even from what I call the diehard preservation
15 community is that, and I'm not saying that this is what the
16 -- that's legal or Chelsea community is saying, is that this
17 works subject to controls. That's the issue that we got to.
18 And so, we'd submit, you know, exactly that that we're
19 prepared to offer a binding element with regard to controls
20 that we think can satisfy that concern.

21 Ms. Christian also, you know, had some -- we had
22 some discussion around the platting of the house and sort of
23 how that would work.

24 MS. ROBESON: Uh-huh.

25 MR. THAKKAR: And so, you know, Mr. Harris looked

1 into this, and there are a number of situations where you
2 can have a historic setting part of which is private which
3 will be the case in this case and part of which, even the
4 37.056 which will be public. There's no concern in our mind
5 around that. In fact, we think it will be better than, you
6 know, just essentially putting, you know, one big lot around
7 the whole house and keeping it only for the use of the owner
8 of the house. Our thought has always been particularly,
9 again this is the northeast corner, that it'd be a park open
10 to the public. So, we see no issue around, you know,
11 dividing that space between public and private pursuant to
12 the controls that I'm going to discuss in a minute. There
13 are other situations where you have historic settings,
14 public and private. PCC High School and Strathmore Mansion
15 are two where there is that, you know, public use and
16 essence of PCC, for example, which is a historic asset.

17 So, with that, I'd like to just put forth this
18 binding element. Give me a second, please. Okay.

19 MS. ROBESON: I'm going to give Mr. Brown and Mr.
20 Gurwitz a chance to take a look at this. Okay. I'm going
21 to mark that as Exhibit 343, proposed binding element
22 related to historic setting.

23 (Exhibit 343 was marked for
24 identification.)

25 MS. ROBESON: Any objections, Mr. Brown?

1 MR. BROWN: No objections.

2 MS. ROBESON: All right. Go ahead, Mr. Thakkar.

3 MR. THAKKAR: So, I'm just going to read it into
4 the record. At the time of record plat, the applicant will
5 record a restrictive covenant for the open space around,
6 open space area around the 37,056 square foot environmental
7 setting for the Riggs-Thompson House generally consistent
8 with the area shown on the STP. The covenant will ensure
9 that the area around the historic setting will remain as
10 open space in perpetuity but will enable applicant to
11 complete all work approved by the planning board as part of
12 the site plan approval. Following completion of those
13 improvements, the covenant will require input from the HPC
14 to the planning board for any site plan amendment to the
15 area subject to the covenant.

16 So, the idea here is simply put that all of the
17 area around the 37,056, the additional area, will remain
18 open space in perpetuity, and there will be a covenant to
19 that effect, and I think an important point is I understand
20 the concerns around, it'll be a corporation or an HOA or
21 what have you being the controller. But, a covenant, just
22 to be clear, it doesn't matter who is in control of that
23 space at any time. If it has to be open space, you know, it
24 has to be open spaces because of the thought behind this,
25 because of that covenant, to address the further concern

1 around HPC and its role, again, for the ground outside the
2 37,056. This says that, you know, once we get approved,
3 whenever we do get approved, and we believe it will be
4 substantively similar to what you see here. To Ms.
5 Christianson's point, we may put a shed or a fence around
6 the house those types of details should we get the site
7 plan. Once those are approved by planning board and, you
8 know, the plan is built as planning board approves it, HPC
9 would be -- the covenant would require that HPC provide
10 input to planning board on any changes that would be made in
11 the future.

12 And, on this point, just as the cut-through
13 traffic, we want to be very clear. We don't think there's
14 any daylight between us, Ms. Christianson, and the community
15 as it relates to nothing being built on this space period.

16 MS. ROBESON: Okay.

17 MR. THAKKAR: Okay. With that, I wanted to jump
18 into a couple of the issues that, you know, we felt, you
19 know, may be outside the area of the remand but were
20 testified to, storm water and sewer and trees were kind of
21 the three that I quickly wanted to hit.

22 MS. ROBESON: Okay.

23 MR. THAKKAR: So, with regard to storm water
24 management. Like I said, an important point is that this
25 site has no storm water management at all today. The county

1 and the state have put forth what the developers certainly
2 think are very strict on one hand but very green on the
3 other hand, rules and regulations for storm water
4 management. We're going to have to follow those
5 unequivocally.

6 If we don't, if we can't reach accommodation with
7 the powers that be, we can't build. Mr. Stires has started
8 the process. We got comments from DRC. We think those
9 comments are reasonable and straightforward, and you know,
10 we have no reason to believe at the time of site plan that
11 we can't work with the county to put forth a storm water
12 plan that is both approvable and will make the condition,
13 frankly, far better than what it is today.

14 With regard to sewer, there was testimony given
15 around a consent decree, consent decree, with regard to
16 upgrades, I guess, that were -- that developers or others
17 would have to make given this current situation in the
18 county. At least that's what, that's what our research has
19 found that there is a consent decree essentially saying, if
20 I can summarize, that given the situation, you know, anyone
21 who's doing anything has to make appropriate upgrades. That
22 is sort of our understanding of the situation.

23 Mr. Stires looked into this matter further with
24 regard to the specific concerns of Ms. Samiy, and her
25 testimony around the issues in the SOECA neighborhood, and

1 what he found was, what I think we may have alluded to is
2 that the Citron, the same building, the 220 unit building to
3 the south of this property, is putting in a pretty
4 significant improvement to an area of pipe that is
5 undersized in comparison to the area of pipe around it and
6 therefore, will be addressing sort of the issue that this
7 community currently has. Based on our conversations, we can
8 tie into that and will not need to make any substantial
9 improvements.

10 All that said, again, we must and fully, we must
11 address this. We will address this. If we can't, we can't
12 build. We think we can, and we can do that at site plan.

13 MR. HARRIS: The consent decree, is that a consent
14 decree applicable to this area or is it applicable to the
15 county as a whole?

16 MR. THAKKAR: County. County wide is my
17 understanding.

18 MR. HARRIS: Okay.

19 MR. THAKKAR: With regard to trees and I know
20 that, you know, I think there's maybe some gray area here
21 where I think our reading of the remand was that trees were
22 outside. However, as it relates to compatibility,
23 potentially, you know, there could be an issue.

24 I guess I'll start by saying, you know, clearly
25 our new plan offers more open space and less buildings in a

1 nutshell, and therefore more opportunity for tree cover and
2 potentially for saving trees than does the old plan. So, I
3 think in terms of the narrow reading of the remand, we've
4 certainly done nothing, done anything that will make it
5 worse. I think, we think we will make the tree canopy and
6 the tree cover better.

7 With regard to tree canopy, you know, I think
8 there's numbers out there suggesting that the tree canopy's
9 roughly, you know, one point eight acres today, and a number
10 of those trees are about, call 60, 65 percent are in, you
11 know, good and are in good condition, and about 30, 35
12 percent are in poor or fair condition. We believe that, and
13 this is on the full five point two five acres, we believe
14 that the canopy -- this is a 20 year growth, obviously, but
15 will be about one point two five to one point three acres
16 and essentially, what I'm saying is that our canopy, given
17 the 20 year growth, will be very similar to the canopy that
18 exists today with regard to the good and healthy trees, and
19 clearly all of our trees will be of a specimen and a type
20 and a size as approved by the county and its folks.

21 And I think that goes beyond sort of just whatever
22 we say we'll do in the forest conservation plan. We'll
23 obviously do that but I'm just sharing with you where I
24 think we can get to. You know, the issue of saving trees.
25 I'd start by saying, you know, whether you look at Doggett

1 one which is the original plan or Doggett two or EYA one or
2 EYA two, I don't think you can say that any of them, and I
3 guess I'm kind of jumping forward to the binding element
4 that the community has offered. You can't say, you know,
5 with certainty that any of them would save all of or even
6 some of the trees that the community would like saved and
7 the reason why is --

8 MR. HARRIS: You need -- oh, you got them?

9 MR. THAKKAR: -- is the trees that, the majority
10 of the trees that were requested to be saved are on
11 Springvale, in this general area. Let's say this area, the
12 northwest corner of the site.

13 MS. ROBESON: Well, you -- continue.

14 MR. THAKKAR: Yeah. In this area of the site and
15 in the southwest corner of the site.

16 MS. ROBESON: Okay. That's --

17 MR. THAKKAR: And there's some others as well.

18 MS. ROBESON: Right.

19 MR. THAKKAR: But, the chunk as we've plotted them
20 out, and we did do that, are kind of in this maybe broader
21 area on Springvale and the southwest corner. The issue with
22 Springvale is that, and this is why I say regardless of what
23 development occurs, R-60 or otherwise, you have to make an
24 improvement to Springvale Road in the right-of-way. So,
25 just being totally forthright, we don't think we can save

1 any of those trees not because of the building but because
2 of what the improvements we'll make in the sidewalks,
3 streets, trees, et cetera.

4 What we have proposed, and I think we already have
5 a binding element to that effect is the double array trees
6 to replace that and that goes to our compatibility and other
7 such things but we recognize the concern and put this
8 forward, you know, even before this was an issue because we
9 thought that the Springvale Road views should have the
10 double row of trees and everything else we've discussed to
11 address what's across the street.

12 With regard to the southwest corner, you know, our
13 plan, frankly, sits off that corner, and we've said far more
14 than the Doggett plan does just with regard to the units as
15 they are proposed today, clearly, I think Mr. Doggett said
16 well, you could just lose four units and then we'd put back
17 just as much as you guys would. But, with regard to that,
18 it's far too early for us to say given utilities, given
19 grade in grid, given storm water management and all the
20 other issues that we have to address at time of site plan
21 that we can't and can say.

22 So, what we're saying is that this new plan gives
23 us an opportunity, frankly, to do more canopy than the other
24 one. The park-like setting gives us an opportunity to
25 provide more canopy that we can talk about more at site

1 plan. But we can, you know, put forth a strong plan that
2 not only addresses the forest conservation plan but sort of
3 addresses the sentiment of, you know, keeping the park-like
4 setting as treed and green as possible.

5 Okay. So, my final point I'd like to share
6 involves timing but I'm not going to go on forever. I'm
7 just going to talk about the compatibility issue, and our
8 new plan.

9 I'd like to start with -- there was testimony, I
10 think, given by Mr. Armstrong, if I'm not mistaken, with
11 regard to a number of comparables that I think we suggested
12 and that he responded to, and what we did was, I guess,
13 first off there are a couple of them that are pretty
14 critical that we did research into, and they add different
15 densities per acre than what was suggested by the
16 opposition, and what we did is we looked at site plans and,
17 we looked at site plans as a way to garner that information,
18 and we think that is the most accurate way to do that.

19 So, there are three projects in particular where
20 the densities came out different. So, I want to start
21 there. Woodside station which is Georgia Avenue and Spring
22 which has been a case of discussion because, not unlike this
23 project, it's, you know, on the other side of what is Spring
24 Street over there and Cedar over here. It's right across
25 from park and planning. So, I think what was stated is that

1 that was 11.4 acres is what was stated by Mr. Armstrong, I
2 believe, and our research suggests 12.26 acres. I'm just
3 reading these in for the record.

4 Fairview Court. Eight point seven acres is what
5 was suggested by Mr. Armstrong. We show 12.38 acres which
6 is a sizeable difference, and then Grace Church at Georgia
7 Avenue and Grace Church. We have 11.95 acres versus the
8 eight point five acres that was testified to.

9 MS. ROBESON: Now, where did you get your
10 calculations from, the actual site plan, the actual approved
11 site plan?

12 MR. THAKKAR: Yes. The actual approved site plan.
13 I just want to clarify this as density per acre, all of
14 these numbers that I read out. So, I say that for the
15 record. My point actually is one that if you look at a
16 number of these R-T 12.5 cases in Silver Spring, again,
17 Woodside Station at 12.26, Fairview Court at 12.38, Grace
18 Church at 11.95, what you'll find is that we think, again,
19 this 12.5 is the right zone in short. Silver Spring has a
20 lot of 12.5. Yes. There could be densities at 11. There
21 could be densities at 13. But we're in the zone in terms of
22 what's, you know, what's around us.

23 The one thing I'd suggest, and we've maintained
24 this from the start, and we think our location is maybe the
25 most superior in terms of why at least we think density

1 might be appropriate. I did review the housing element. It
2 does talk about, essentially building housing close to
3 amenities, public transportation, and such. What we did,
4 Ms. Barr and I, is look at the walk scores, you know, that I
5 submitted in my testimony that the Chelsea School had an 89
6 walk score.

7 Just to back up what a walk score is. It's a
8 website, and it essentially allows you to put in an address
9 and it gives a particular address a walk score. The higher
10 the walk score from 0 to 100, the more walkable that it is,
11 and so, you know, let's start with Chelsea. Depending on
12 where, what address you enter, it's between an 89, and I put
13 the lowest in the record just to be an over-abundance of
14 caution, we put the lowest in the record but it's somewhere
15 between 89 which is called the highest end of very walkable
16 to 94 which is a walker's paradise, and I think we've
17 already talked about why that is the case. Whole Foods,
18 Metro, AFI, et cetera.

19 If you look at Woodside Station, as comparable in
20 our mind. Depending on the addresses you put in, it's the
21 exact same walk score, and that was built a while back, I
22 think, before this notion became sort of more of the guiding
23 policy of the county.

24 If you look at Good Counsel, that we mentioned an
25 R-T 15 case, that's a walk score at 78 which is the lower

1 end of very walkable. We've always argued that that case,
2 while it's an R-T 15 and, yes, it's on Georgia Avenue, it's
3 not nearly as walkable as, you know, what we're proposing
4 here, and that gets to this notion of, you know, is a major
5 highway important? Yes. The counsel's on Georgia Avenue so
6 maybe it has a lower walk score, and I'd suggest that maybe
7 one portion of compatibility but the idea behind projects
8 like this is not that it be necessarily on a major highway
9 but, again, that it have the proximity to the amenities that
10 we think will result in less car use and more, you know,
11 enhanced quality of life for the folks who live here.

12 So, the walk scores to us -- there are a number of
13 walk scores of communities R-T 12.5. I'll take, you know,
14 Belvedere Glenn which I think we both talked about its
15 forest plan, sector plan. It's got density of anywhere
16 between eight point four, nine point two six per acre. That
17 has a walk score of 35, and my point is only to say that
18 there are a number of townhouse developments that are R-T
19 12.5 that are extraordinarily low on the totem pole as it
20 relates to the case we're trying to make here today.

21 Next, just some brief rebuttal testimony with
22 regard to the Doggett Plan. In summary, we don't think that
23 this plan is buildable as proposed, and it goes back to my
24 point around access, emergency access in particular, and we
25 did meet with the fire chief.

1 Dr. Lebow (phonetic sp.) has been mentioned before
2 in this case, and we showed her this plan and she said,
3 again, just to be clear, that one access point is allowed,
4 two is better, is what she tells everybody, and this has
5 one. But, in this case, what would actually have to happen
6 to provide fire truck turn around, these units would have to
7 be pushed into the historic setting to widen the alley
8 substantially, somewhere between, let's call it 16 and 20
9 feet to give the truck enough room to back out and pull out
10 the other way. So, I say that to say that, again, the
11 considerations we looked at were, you know, whatever you do
12 here, how much are you encroaching and this plan itself
13 would need to encroach for that reason.

14 You know, this plan -- there's a discussion around
15 MPDUs and, you know, there is a law in place. Sure, we
16 could build this plan and build half of it as MPDUs or
17 anyone could. But, there is a law in place and, you know,
18 this plan would, de facto, have, you know, less. You know,
19 you could use bonus density and all that. I understand
20 that. But, this plan could also be built with base MPDUs
21 and have substantially less MPDUs. EYA, you know, believes
22 in the workforce having concept, and we think we heard a lot
23 from the council with regard to not just MPDUs but we like
24 the idea of allowing maybe a little bit more density in
25 certain places as long as the MPDUs or the higher number of

1 MPDUs come with it. As I said, it's not conclusive that
2 this plan could save any more trees than our project.

3 With regard to the setbacks, I understand that if
4 you make the case that the farther back you are, the more
5 compatible it is. But, I almost feel -- I think our opinion
6 was this is sort of hiding the development and the point is
7 to be compatible and to relate to what's across the street
8 not just pull back so far that, you know, you can't be seen
9 at all and that's just, you know, an opinion.

10 So, in summary, we understood what they were doing
11 here. We don't think it's buildable as proposed, and we
12 think our plan in terms of compatibility, you know, is
13 frankly as compatible as this one. We do appreciate,
14 however, that we've had this tussle around barracks and, you
15 know, what is a, you know, what is barrack and what isn't.
16 It appears that there's been some adoption of the type of
17 orientation that our plan has by, you know, by Dr. Doggett
18 in any event.

19 And so to finally, you know, to the EYA plan to
20 overall compatibility of, you know, mass and density. I
21 think, to us, one second here.

22 So, I'll start my testimony on this point with our
23 overall green area plan, and to me, if there's sort of one
24 diagram that displays why we think we're compatible and the
25 devil is in the details. It is this one. We are, you know,

1 we have a binding element of 50 percent green space. We're
2 showing more on this plan. But, I think what's more
3 important as related to compatibility, we've had a lot of
4 discussion around Springvale Road and to us, I think
5 Pershing Drive is clearly addressed from a compatibility
6 standpoint with now this larger park setting. We believe
7 that Ellsworth is clearly addressed through this larger park
8 setting, and we believe Cedar Street is addressed through
9 the pulling back and addressing the 30 feet setback that the
10 R-T 12.5 requires.

11 So, the other question is, okay. You know,
12 compatibility on Springvale Road. So, I'd start by saying I
13 think through the entrances on Springvale, and the single
14 family fronts as we called it, that's one aspect of
15 compatibility. Note that even across Springvale Road, and
16 I'll call these zones. We have, you know, green zones all
17 across the front which start on Pershing that you have these
18 two courtyards on Ellsworth.

19 So, we think that those green zones, if you will,
20 are compatible. We also think that the fronts of these
21 houses are compatible the way we've designed them, you know,
22 and the way we looked to design them which is in a similar
23 manner to the planned park model that they talked about
24 throughout this case. So, I think we can address them, you
25 know, on the actual fronts of the units. I think the

1 question then becomes, okay. If the green space, you know,
2 assuming that the green space is fully compatible, the
3 fronts of the units can be compatible. The question that
4 has come up is, you know, what do you do about these alleys
5 and, you know, how do you screen them? The important part
6 of this plan it's actually different from Clarendon, even,
7 in that these alleys don't go through, and that -- so
8 there's a very large opportunity, if you will, to provide
9 appropriate screening and such, and so we heard that as an
10 issue. We think we have addressed compatibility with
11 respect to the rest of the zones as I'll call them, and so
12 I'd like to provide a binding element that will talk in more
13 detail about what we suggest for the alleys to provide
14 additional comfort on that point.

15 MS. ROBESON: And this will be 344.

16 (Exhibit No. 344 was marked
17 for identification.)

18 MS. ROBESON: Thank you. And I just called this
19 proposed binding element regarding screening of alleys. Mr.
20 Brown, do you have an objection?

21 MR. BROWN: No objection.

22 MS. ROBESON: Thank you. Go ahead, Mr. Thakkar.

23 MR. THAKKAR: Just to read this into the record.

24 At the time of site plan, the applicant will propose for
25 planning board approval a double row of trees along

1 Springvale Road and landscaping combined with decorative
2 walls at the ends of the alleys facing Springvale Road to
3 screen the view down those alleys, and it's essentially, you
4 know, exactly what it says. We've always suggested that we
5 think we can adequately screen those alleys and because they
6 don't go through, it gives us an opportunity to not only
7 build a wall but have additional landscaping and then the
8 double alley of trees and so the 25 foot setback, we think,
9 gives us a real opportunity to address that concern.

10 Just, you know, as a side, an R-60 plan with 35
11 units would only have to provide 2,000 square feet of open
12 space per home. That's 70,000 square feet which is, you
13 know, call it an acre and three-quarters, and again, our
14 point is, that's why I always refer back to this, we paid a
15 lot of attention to this diagram in saying, you know, is the
16 green space appropriate and then what we do with it along
17 with the architecture, will that make it compatible and our
18 answer certainly is yes.

19 So, in closing, I think, you know, one of the
20 issues that we've had in this case, you know, what is
21 compatible and, you know, I joke about this but my wife and
22 I, for example, are the least same people that I know. We
23 are very different. However, we are compatible, and I say
24 that to say that in my mind, in our mind, compatibility
25 doesn't mean sameness, and we've tried to address sameness

1 to some extent by the single family fronts but it really
2 doesn't mean sameness. It means can these things work
3 together is the way we view it, and we suggest that the
4 plan, as we have redrawn it, addresses the chief concerns
5 and that this will work together very well with the
6 community.

7 MS. ROBESON: Mr. Harris, do you have any --

8 MR. HARRIS: Nothing further.

9 MS. ROBESON: Okay. Mr. Brown?

10 MR. BROWN: Let me ask -- are you going to have
11 Mr. Iraola testify?

12 MR. HARRIS: I was not. No.

13 MR. BROWN: Okay.

14 CROSS EXAMINATION

15 BY MR. BROWN:

16 Q Mr. Thakkar, let's start with Exhibit 314U. Could
17 you pull that out, please?

18 A Can you tell me what it is?

19 Q 314U.

20 A Got it now.

21 Q That's called resolution 16-1030 by the county
22 council.

23 MR. HARRIS: I don't have all the exhibits here.
24 It's one of the opposition exhibits. Yeah. Am I in the
25 right file? Too many files.

1 BY MR. BROWN:

2 Q You have it now?

3 A I do.

4 Q Would you turn to page 6 of Montgomery County
5 Executive Regulation 29-08AM.

6 A Yes.

7 Q Page 6?

8 A Yeah.

9 Q Do you have any reason to believe that this
10 regulation is not currently in effect? Particularly section
11 7.

12 A I do not.

13 Q Would you read aloud section 7 for the record,
14 please?

15 A Dead end fire department apparatus access greater
16 than 150 feet long must provide an approved apparatus turn
17 around. Approved designs include a cul-de-sac at the closed
18 end of at least 90 feet in diameter or a turn around with
19 each leg of the T at least 60 feet long and 20 feet wide.

20 Q That's a T turn around. Right?

21 A A T. That's what it appears to be.

22 Q Now, looking at Doggett two, that plan would have
23 to comply with this regulation because it has an access lane
24 greater than 150 feet long. Correct?

25 A I'll take your word.

1 Q From Ellsworth in --

2 A Yeah.

3 Q -- it's greater than 150 feet, isn't it?

4 A Yes.

5 Q All right. And, in fact, each of the legs of the
6 T is at least 60 feet long, isn't it?

7 A It appears to be.

8 Q And what is the width of the last two alleys? Can
9 you give scale to measure that? I didn't bring my scale
10 with me. Could you go up and scale those for us, Mr.
11 Thakkar? The alley widths.

12 MS. ROBESON: Well, he can't testify to what it
13 is.

14 MR. THAKKAR: Okay.

15 MS. ROBESON: You can measure it or he can measure
16 but you have to say what it is.

17 MR. HARRIS: What scale is it?

18 MR. THAKKAR: I think it's 40. Appear to be 28.
19 Twenty-eight feet.

20 BY MR. BROWN:

21 Q The width of the last alley is 28 feet?

22 A It appears to be but maybe I'm reading it wrong.

23 Q You should be using the 40 scale.

24 A I am. Okay. Yeah. I said 28 because I'm
25 assuming --

1 Q Yes.

2 A -- that 28 feet is what the alley is and then you
3 have the four feet on each side.

4 Q So, is it fair to say that Mr. Doggett designed a
5 plan that is compliant, in compliance with section 7 of
6 Montgomery County Executive Regulation 29-08AM?

7 A I don't know because I'm not sure if the turning
8 radius that, you know, as he's drawn it, works. You know, I
9 don't know just based on those two measures, those two
10 measures. I can only tell you what I know which is that we
11 presented this plan to the implementors of this who said
12 that as drawn, it wouldn't work because of the widths of
13 alleys as I said.

14 Q Well, if the width of the alley is 20 feet and
15 someone looked at this and found that the width of the
16 alleys on this drawing was not 20 feet, it wouldn't be off
17 by very much, would it?

18 A I'm not saying that -- are you saying that she
19 thought that it wasn't 20 feet?

20 Q I don't know. I wasn't at the meeting. You're
21 testifying.

22 A What I'm saying that in this particular
23 configuration, 20 feet may not be acceptable is my
24 understanding as this plan is drawn.

25 Q How does it violate the regulation?

1 A I can't tell you. I don't know. I'm not a fire
2 expert. It may have to do with turning radius and the
3 ability for the truck to get in and out of that alley. So,
4 not the actual width of the alley but what you'd need to
5 provide for the truck to back in and out of the alley.

6 Q But, with a T turn around, you do not need a 90
7 foot diameter cul-de-sac, do you?

8 A I'm not suggesting that. What I suggested is that
9 the alleys may have to be widened to my understanding. You
10 could keep this configuration but you'd have to widen the
11 alleys is what I testified to. It means push the units into
12 the environmental setting.

13 Q Now, with regard to your testimony regarding the
14 dual access to the side being the preferred option --

15 A Yeah.

16 Q -- the word preferred implies to me that it's not
17 the only option, isn't that correct?

18 A That is correct.

19 Q In fact, under the Montgomery County regulations
20 for the required number of access routes for residential
21 areas, if the number of households is anywhere between zero
22 and 100, the number of required, the minimum number of
23 required access routes is one, isn't that correct?

24 A That is correct.

25 Q Now, with respect to Exhibit 344, your proposed

1 binding element for --

2 A Yeah.

3 Q -- decorative walls at the ends of the alleys.

4 A Yeah.

5 Q Would you please point out on one of your diagrams
6 exactly where these decorative walls would be?

7 A Sure. They would be at the ends of the alleys on
8 Springvale. So, they would be on all three of the alleys
9 perpendicular to Springvale.

10 Q So, as I understand it, the facades that would
11 face the residents on Springvale, there will be basically
12 three facades of brick and mortar, each one of them in
13 length equal to the depth of two town homes and the width of
14 an alley. Is that correct?

15 A Say that again in terms of the exact measurement.

16 Q In terms of brick and mortar facades facing
17 Springvale, there would be three of them. Correct?

18 A Correct.

19 Q Because there are a couple of mews that would not
20 have to be covered by these decorative walls.

21 A They would not. Correct. Yeah.

22 Q So, each one of these facades of brick and mortar
23 would consist of the fronts of two homes plus a decorative
24 wall.

25 A The fronts of two homes. The picture at the

1 bottom of the exhibit that I'm currently showing is an
2 example so you can see the facades, as you're talking, of
3 the two homes. The courtyard's in the middle which are now,
4 actually, expanded. This is from an old drawing, and you
5 can actually see the, you know, what -- because of the
6 grade, actually, the decorative wall, you know, kind of
7 hides as you go up. So, here, here, and here would be what
8 it would potentially look like. I think that better answers
9 the question than me describing it.

10 Q Yes. And each one of these constructions which
11 consist of two homes and a decorative wall --

12 A Yes.

13 Q -- would be equal in length to the, basically, the
14 depth of the two homes plus the width of the alley.

15 A Right.

16 Q Okay. Looking at your Exhibit 343, the binding
17 element for the historic property and the associated open
18 space.

19 A Correct.

20 Q You used the word input toward the bottom with
21 respect to the HPC.

22 A That's correct.

23 Q I take that to mean that whatever the HPC has to
24 say about this would be purely advisory. Is that your idea?

25 A It would, it would be given the weight that the

1 planning board would give it. That's what we meant. They
2 would provide input to the planning board. The assumption
3 was that if you had to do anything to this property, you'd
4 have to go back to the planning board to do anything other
5 than what we are, we have proposed. So, it'd be a site plan
6 amendment, if you will. So, that one of applicants would
7 have to go through a site plan amendment process.

8 Q But, there would be no issuance of a historic area
9 work permit by the HPC would there?

10 A Not outside the 37,056.

11 Q Yes. Now, you went over these numbers kind of
12 quick for me, Mr. Thakkar. So, I would like you to repeat
13 them for me again.

14 A Sure.

15 Q I'm referring, now, to your critique of Exhibit
16 314D.

17 A Right.

18 Q Can you pull out that exhibit, please?

19 A 314.

20 MR. HARRIS: D.

21 UNKNOWN FEMALE 2: Is it this one?

22 MR. THAKKAR: I think so.

23 MR. HARRIS: That's the, yes. Okay.

24 MR. THAKKAR: I have that exhibit.

25 BY MR. BROWN:

1 Q Now, would you please tell me again which numbers
2 on this exhibit you think are erroneous and what you think
3 the correct numbers are and please take them one at a
4 time --

5 A Sure.

6 Q -- using Exhibit 314D.

7 A Okay. Let's start with -- I don't see Woodside
8 Station on there, which is the first one that I --

9 Q Is it the third from the end?

10 MR. HARRIS: Yes.

11 MR. THAKKAR: Right. Yeah. Woodside Townhouses.

12 MR. HARRIS: No. It's Woodside Park.

13 MR. THAKKAR: Woodside Station. Sorry. Yes.

14 It's the fourth including what I -- yes. Okay. So,
15 Woodside Park condos as this calls it. This exhibit, your
16 exhibit, shows 11.4 units per acre. Okay?

17 BY MR. BROWN:

18 Q And two point eight acres with 32 units.

19 A That's correct.

20 Q What's wrong with any of those numbers?

21 A We have two point -- I mean, the differential is
22 we have two point six one acres. So, hence the difference
23 from what I testified to is 12.26 acres.

24 Q You have two point six one acres.

25 A Yes.

1 Q All right. Is the number of units correct? 32?

2 A It is.

3 Q And the density is not 11.4. It's what?

4 A Our calculation is 12.26.

5 Q Okay. Next correction, please.

6 A The next correction, Fairview Court. Okay. That
7 is the fourth down on the first page.

8 Q Okay.

9 A And we have -- what I testified to is 12.38 acres.
10 This shows eight point seven acres.

11 Q I'm sorry. I see Fairview Court with one point
12 five acres on this exhibit.

13 A Sorry. Eight point seven units per acre. Excuse
14 me.

15 Q Is the acreage correct? One point five?

16 A It is not. Again, we have one point zero five and
17 this says one point five zero.

18 Q And the number of units is correct?

19 A It is at 13.

20 Q And therefore the density on your calculation is
21 what?

22 A Twelve point three eight.

23 Q All right. And the next one?

24 A This is the last one. Grace Church.

25 Q I don't see the words Grace Church on here. Is

1 that Ottawa Place?

2 A Unh-uh.

3 Q Or is it Layton's Addition, Woodside?

4 A Okay. I believe it is Layton's Addition,
5 Woodside. Yeah.

6 Q All right. What's wrong with the numbers?

7 A Okay. So, again, I think the acreage. The units
8 are fine. We concur.

9 Q Ten units?

10 A Yeah. The area or acreage, we have point eight
11 three six nine. So, that's the difference, and the result
12 is a density of 11.95 is what we're calculating.

13 Q Okay. Bear with me just a minute.

14 A Certainly.

15 UNKNOWN MALE: We need time to calculate.

16 MS. ROBESON: That's fine.

17 BY DM:

18 Q Now, again, Mr. Thakkar, where did you get your
19 acreage numbers from?

20 A The acres came off of plats. Every case that I
21 just stated to you.

22 Q All right.

23 A The record plats.

24 Q Do you know why the website, Montgomery County
25 Maps -- let's take the Fairview Court as an example. Do you

1 know why the website, montgomerycountymcmaps.org would show
2 an acreage of one point five rather than one point zero
3 five?

4 A I don't know.

5 MS. ROBESON: Did you base it on gross tract
6 density?

7 MR. THAKKAR: I believe we did off of the plat.

8 BY MR. BROWN:

9 Q With regard to Ms. Warren's analysis, Mr. Thakkar,
10 in the course of your testimony, you did not offer any
11 additional documentation to supplement the documents that
12 were in her analysis, did you?

13 A I did not.

14 Q In your review of her analysis, did you find any
15 of the documents to not be what she purported them to be?

16 A No.

17 Q You said it was a reasonable assumption that Nancy
18 Sturgeon did her job. Correct?

19 A I did.

20 Q Do you recall Ms. Warren's testimony to the effect
21 that Nancy Sturgeon in her report to the board about changes
22 between the master plan that had been discussed in March and
23 the master plan that was -- and the changes that were
24 summarized in her memo? Do you recall her testimony to the
25 effect that every other change except for this change in the

1 master plan was identified in that memorandum?

2 A I do recall that testimony.

3 Q So, what is your assumption about her failure to
4 identify this particular change in that document?

5 A My assumption of that -- this is not, this wasn't
6 the only opportunity for her to make the planning board
7 aware of that change.

8 Q And is it also your reasonable assumption that
9 each time the planning board considers a master plan in this
10 iterative process or discusses the master plan that each
11 planning board member, on its own initiative, is going to
12 read and try to figure out where all the changes are between
13 the earlier version that they read and the new version?

14 A They may but that's not my testimony. They should
15 read the plan was my testimony. So, in reading that plan
16 prior to being put forth to council should anything alarm
17 them, I would imagine they would bring it to their staff's
18 attention. What I'm also saying, though, is that she could
19 have made them aware of this particular change at a number
20 of different points in that six months. We cannot assume
21 that that memo is the only opportunity she had to
22 communicate to the council, to the planning board members.

23 Q Isn't it a fact when the staff communicates to the
24 planning board, it must do so in a public meeting?

25 A I'm not aware.

1 Q Either that or through a written memorandum?

2 A Again, I'm not aware that that is the only form of
3 communication that they are able to have with the planning
4 board.

5 Q But, your assumption is dependent upon an
6 interpretation of that possibility as being possible, isn't
7 that correct?

8 A No. It could have been communicated in another
9 memo or another form that I'm not aware of that wasn't in
10 this documentation.

11 Q Yeah.

12 A So, I just can't recreate -- so, it could have
13 been a memo but it could have been a memo that was not part
14 of the record. I don't know.

15 Q And you haven't presented any such memorandum have
16 you?

17 A I have not.

18 Q If I understand your testimony about tree canopy,
19 it's that, well, we need to look 20 years down the road at
20 what the tree canopy is going to look like when the new
21 trees that are being planted have grown out somewhat.

22 A That's correct.

23 Q So, there will be a 20 year period when the net
24 effect of this construction is going to be a significant
25 reduction in the tree canopy, isn't that right?

1 A That may be the case. There may be some
2 reduction.

3 Q You heard Mr. Doggett talk about actually working
4 sidewalks around existing trees. Do you recall his
5 testimony to that effect?

6 A I do.

7 Q Is there some inconsistency with the construction
8 of sidewalks in a right-of-way with trees that may be in
9 that right-of-way as well?

10 A It's not just construction of sidewalks. It's
11 actually using -- it's sidewalks. It's utilities. It's
12 grading. It's a whole host of things that would occur in
13 order to make the improvement possible, and I can't sit here
14 today and tell you that we can meander around trees given
15 all that work is required of us to be done.

16 Q Yes. I think what you said, basically, if I can
17 characterize it is that right now it's a little too early to
18 predict what exactly can be saved in the way of trees.

19 A Yeah.

20 Q Right?

21 A Yeah. Our further prediction is on Springvale in
22 particular, it would be very difficult to save trees given
23 the improvement that we have to make to Springvale.

24 Q But, in fact in Exhibit 32A, pages 1 and 2, you
25 submitted a preliminary forest conservation plan for the 76

1 unit town home project that identified a prediction as to
2 which trees could and could not be save, didn't you?

3 A We did.

4 Q And isn't it also the case that you did not update
5 that preliminary forest conservation plan for the 63 unit
6 project?

7 A We weren't required to and we didn't.

8 Q But you could have, again, predicted which trees
9 would and would not be lost based upon the kind of analysis
10 that went into Exhibit 32A. Correct?

11 A You could. What I said was that you can't bind
12 yourself at this point in time. That's a preliminary forest
13 conservation plan to give the county a sense of whether or
14 not this development is possible based on the forest
15 conservation laws. That's the intent of the forest
16 conservation plan and that's what we did.

17 Q But, you did hear the testimony of Mr. Doggett
18 that trees and tree canopy are an important element of
19 compatibility particularly in this area did you not?

20 A I did. As I testified, I believe that the
21 combination of the parks, the green, and the new trees will
22 provide that compatibility.

23 Q Yet, you did not think it important enough to the
24 compatibility analysis to provide the Hearing Examiner with
25 information as to your best prediction as to which trees

1 would or would not be lost under this revised plan,
2 regardless of the fact that you weren't obliged to do so.

3 A We did not because as I testified, in our view,
4 this plan only makes the situation better, and so when we
5 came into this case and looked at the remand, we thought,
6 okay. To the extent that we made things worse maybe we had
7 to address them given the enhanced amount of green space on
8 this plan, our thought was that we would make things only
9 better as it relates to trees, greenery, and similar.

10 Q Yes. I understand the metric in that sense is
11 this is a better plan than the earlier plan. Correct?

12 A It has more green space than the earlier plan
13 which provides more opportunity for trees.

14 Q Let me look at my notes here and my client's.

15 MR. HARRIS: May I borrow that exhibit a moment?
16 David? I'm sorry. May I borrow that exhibit a moment?
17 Thank you.

18 BY MR. BROWN:

19 Q Mr. Thakkar, this is one of your slides that
20 highlights this metric of comparing the old plan with the
21 new plan, doesn't it?

22 A It does.

23 Q And it highlights the various ways in which the
24 plan has been improved. Right?

25 A It does.

1 Q You show in here on a unit count basis that
2 there's a 17 percent reduction in the density. Right?

3 A I do.

4 Q You are aware that the remand was supposed to
5 address not only density but massing. Right?

6 A I am and I believe we did.

7 Q I know that you addressed massing but I'm
8 wondering why, in your comparison of old versus new there
9 isn't any mention or analysis of the percentage reduction in
10 massing.

11 A I wouldn't know how to calculate that.

12 Q Oh.

13 A The interpretation of massing was how building
14 relate to Springvale across the street for instance.

15 Q Well, wouldn't one element of massing be the
16 overall size, collective size of the footprints of all the
17 buildings?

18 A Not necessarily. It depends where they are and
19 how they relate, again, to what's around them.

20 Q I understand that but just as an isolated factor,
21 wouldn't the cumulative total of the footprints of all the
22 buildings and the extent to which that footprint,
23 accumulative footprint has been reduced be something to be
24 considered in evaluating the improvement in massing?

25 A It may be one of many considerations you'd look

1 at.

2 Q Okay. Well, let's focus on this one consideration
3 for a moment. Isn't it the case that the reduction in
4 footprint of all of the buildings, collectively, has been
5 less than a 10 percent reduction?

6 A That may be.

7 Q And isn't it also the case that wholly and apart
8 from these decorative walls that you're proposing that the
9 total amount of brick and mortar facade that will be facing
10 the residents who live across the street on Springvale Road
11 will increase both in terms of the total length from
12 building one through building six and in terms of the actual
13 amount of facade?

14 A There will be an increase in facade. You know, as
15 we've said all along, and I'll point to this diagram again
16 on the screen here, we've got essentially six single family
17 fronts facing one or one, two, three, four, five, six,
18 seven, eight, nine homes across the street, and we think,
19 again, given the analysis that we shared with regard to the
20 trees, with regard to the setback, with regard to the
21 screening, and with regard, frankly, to the architecture and
22 haven't gone into detail there, that that condition as
23 proposed in this plan is very compatible with what's across
24 the street. That's our testimony.

25 Q Mr. Thakkar, I know you're not a tree expert but

1 you did hear the testimony of Mr. Grove and Mr. Doggett with
2 respect to trees planted along Springvale, did you not?

3 A I did.

4 Q I don't want to try to characterize their
5 testimony but what I recall is the notion that there's some
6 concern that a double row of trees along Springvale will,
7 over time, not provide for optimum growth of those new
8 trees. Do you recall --

9 A I do.

10 Q -- something along those lines?

11 A I do.

12 Q Do you agree with that?

13 A I don't agree with that and subsequent to that
14 testimony, we had further discussion with our arborist and
15 with our engineers and believe that it depends on the tree
16 that you plant. Again, I'm not an expert. I'm getting out
17 of my element here but it depends on the trees you plant and
18 the distance between the trees with regard to what the
19 growth pattern or ultimate growth will be. So, we don't
20 necessarily agree with that. We've done it elsewhere and
21 found it to be a very effective way to provide a tree canopy
22 and screening.

23 Q Your arborist isn't here to testify today, is he?

24 A He's not.

25 Q And you don't have a binding element on this

1 particular point about making sure that this is going to be
2 a realistic and survivable double row of trees.

3 A I don't have a binding element. I do think that
4 that is exactly the job of staff. They're very capable and
5 they're very focused on ensuring that whatever they accept
6 is implementable and sustainable.

7 MR. BROWN: That's all I have. Thank you.

8 MS. ROBESON: Thank you, Mr. Brown. Before I turn
9 it over to Mr. Harris for redirect, I have a condition on, I
10 mean I had a question on Exhibit 343 which is the binding
11 element relating to the historic setting?

12 MR. THAKKAR: Yes.

13 MS. ROBESON: The very last sentence says the
14 following completion of those improvements, the covenant
15 will require input from the HPC to the planning board and I
16 guess my question is input is not really the most legally
17 clear term. Are you saying review by the HPC and advise to
18 the planning board. Is that what you're --

19 MR. THAKKAR: My interpretation is an advisory
20 capacity so advice at what I think would be appropriate.

21 MS. ROBESON: Okay. I would like to change it if
22 that is, to advise but it's you're proposed binding element
23 so --

24 MR. THAKKAR: That's fine.

25 MS. ROBESON: So, I'm just crossing out input on

1 Exhibit 343 and substituting advice.

2 MR. THAKKAR: Okay.

3 MS. ROBESON: Okay. Mr. Harris, redirect.

4 REDIRECT EXAMINATION

5 BY MR. HARRIS:

6 Q A few questions, Mr. Thakkar, with respect to the
7 two points of access. First is a single. Did the planning
8 staff express a preference as to which alternative is
9 superior?

10 Q They did. As I testified, they preferred to
11 access points. Preferred.

12 A You were questioned about the "brick and mortar"
13 component along Springvale under this if you add three walls
14 at the ends of alleys. I'm showing you now Exhibit 187
15 which is Mr. Doggett's first plan that the community
16 supported.

17 MR. BROWN: I have to object. I allowed this to
18 go forward last time but this plan is not before you. We
19 have abandoned the R-60 claim in this case and for him to be
20 making comparisons to what might be done under R-60 is not
21 helpful.

22 MS. ROBESON: Well, I think that they're -- you
23 proffered this relative to the turnaround or the trees?

24 MR. HARRIS: No. We tie the relevant to the
25 bricks and mortar as they were described that confront the

1 Springvale Road.

2 MS. ROBESON: Okay. I think that's a fair
3 comparison and it is in the record of the case. So, it's a
4 fair point for cross examination.

5 BY MR. HARRIS:

6 Q Mr. Thakkar, comparing Exhibit 187, the first
7 Doggett plan with one, two, three, four, five, six, seven,
8 eight, nine, 10, 11, 14 houses along the entire length of
9 Springvale Road. Do you have an opinion as to whether the
10 bricks and mortar from the Doggett plan versus the bricks
11 and mortar from the Chelsea Court R-T 12.5 plan including
12 the decorative walls at the ends of alleys, which is
13 superior in your opinion?

14 A The EYA R-T 12.5 plan just because of the number
15 of units facing Springvale.

16 Q And if the Doggett two plan were to be built, do
17 you believe it would be appropriate to have decorative walls
18 at the ends of those alleys facing Springvale Road?

19 A I would.

20 Q And how would that brick and mortar component
21 compare to the brick and mortar of the Chelsea Court R-T
22 12.5 plan?

23 A Very similar to.

24 Q You were asked about whether you saw any, I forget
25 the word, any documents in Ms. Warren's presentation that

1 you found to be inaccurate. Do you remember the discussion
2 about the blue bound book? We did not put that into
3 evidence.

4 UNKNOWN FEMALE 2: Objection.

5 BY MR. HARRIS:

6 Q Do you remember that discussion?

7 A I do.

8 UNKNOWN FEMALE: That was stricken. That was
9 stricken.

10 MS. ROBESON: Wait. I'm sorry. I was --

11 MR. HARRIS: Okay.

12 MS. ROBESON: What's your question?

13 MR. HARRIS: I'll ask it again.

14 BY MR. HARRIS:

15 Q Do you remember the discussion the other day --

16 MS. ROBESON: Did I hear blue bound volume?

17 MR. HARRIS: Yes. That's not admitted into
18 evidence.

19 MS. ROBESON: Yeah. It was --

20 MR. BROWN: This is redirect.

21 MS. ROBESON: It is redirect. and that's not in
22 evidence.

23 UNKNOWN FEMALE: And that was stricken.

24 MS. ROBESON: You didn't testify --

25 MR. HARRIS: The documents not -- he was asked

1 whether there was anything he found to be incorrect in her
2 documents, and I'm just trying to see if he wants to clarify
3 that.

4 MS. ROBESON: I don't want to let it in the side
5 door. It's not --

6 MR. HARRIS: Then never mind.

7 BY MR. HARRIS:

8 Q With respect to the trees along Springvale Road,
9 the existing trees, do you know if they're in the public
10 right-of-way?

11 A They are. Many of them are, I should say.

12 Q And what work is proposed for the Chelsea Court
13 plan along Springvale Road?

14 A Along Springvale, curb, gutter, and sidewalk is
15 the major improvement that will take place on Springvale.

16 Q Is there any widening of the road planned?

17 A To include those, to include those features which
18 are required in terms of moving forward.

19 Q And are you planning additional landscaping along
20 there?

21 A We are.

22 Q Sir, do those items have any impact on the
23 existing trees?

24 A They do. As I testified, all of those have
25 impacts on the existing trees and that is why we can't make

1 firm prediction today.

2 Q And would those impacts be similar for other
3 development whether it be the Doggett one plan or the
4 Doggett two plan?

5 A They would.

6 Q And do you have an opinion as to whether the new
7 landscaping along there would be preferable to the existing
8 trees in the right-of-way?

9 A What I can say is that all of the trees that we
10 are planning are of appropriate species and will be of good
11 health. It's to that extent not knowing exactly what's
12 there today and it's health, we believe that over time,
13 it'll be indicated.

14 MR. BROWN: One second please. I have no further
15 questions.

16 MS. ROBESON: Okay. I am still -- could you put
17 that, the bottom exhibit, up for a moment? Is -- okay. I
18 have to go back. It says this covenant will ensure that the
19 area around the historic settings. Is the correct term
20 historic setting or environmental setting? I just want to
21 make sure everyone -- so, if I change this to environmental
22 setting --

23 MR. THAKKAR: Which sentence?

24 MS. ROBESON: I'm sorry. The second sentence.
25 And the area that's shown with just the -- not the cross

1 hatching but the diagonal hatching.

2 MR. THAKKAR: The checkered.

3 MS. ROBESON: That's the environmental setting.

4 It says that the covenant will ensure that the area around
5 the historic setting will remain as open space but will
6 enable -- okay. So, the cross hatch, are you referring to
7 the cross hatched area?

8 MR. THAKKAR: Yes. I'm calling it the checkered
9 but yeah, the cross hatched.

10 MS. ROBESON: Oh. The checkered.

11 MR. THAKKAR: The checkered area is the area
12 around the setting.

13 MS. ROBESON: Okay.

14 MR. THAKKAR: So, the cross hatch is the 37,056.

15 MS. ROBESON: Right. Oh. Right.

16 MR. THAKKAR: Yeah. The diagonal lines, let's
17 call them, is the 37,056 and the checker --

18 MS. ROBESON: Right.

19 MR. THAKKAR: -- is what is around.

20 MS. ROBESON: Okay. Do you have any problem if I
21 -- instead of using HPC if that goes to Historic
22 Preservation Commission?

23 MR. THAKKAR: No.

24 MR. HARRIS: No problem, and you're correct on
25 your earlier comment about the historic setting. The master

1 plan does refer to it as environmental setting on the fourth
2 line there.

3 MS. ROBESON: I just want to make it so everyone -
4 - whatever happens, this is clear as to what the intent is,
5 and I'm going to -- SDP is the schematic development plan.
6 Correct?

7 MR. HARRIS: Correct.

8 MS. ROBESON: Is that area going to be shown as
9 public space in the final SDP that you submit to the
10 council?

11 MR. THAKKAR: When you say public --

12 MS. ROBESON: Well, what you're saying here is
13 when this goes to the council, I want to make sure the
14 council knows exactly what area you're talking about. So,
15 are you saying -- are you going to show this --

16 MR. THAKKAR: We can show what --

17 MS. ROBESON: -- general location of this on the
18 SDP?

19 MR. THAKKAR: We can.

20 MS. ROBESON: I think you would need to do that.

21 MR. THAKKAR: Okay.

22 MS. ROBESON: Because you have generally
23 consistent with the area shown on the SDP.

24 MR. THAKKAR: Right.

25 MS. ROBESON: So, you're not locked into a --

1 MR. THAKKAR: Site plan.

2 MR. HARRIS: Ms. Robeson, so you're referring to
3 identifying that checkerboard area?

4 MS. ROBESON: Exactly.

5 MR. HARRIS: Yes.

6 MS. ROBESON: Okay. So, in substituting SDP in
7 the first sentence would be schematic development plan.
8 Then in the second sentence instead of the term historic
9 setting, we're saying environmental setting. What, okay.
10 Can you just describe, would you describe that area? In the
11 first sentence would that be area designated for public use?
12 Is that what it is? Is that a fair description or not?

13 MR. THAKKAR: It isn't only because some of it may
14 go with the house. So, we would have to, you still have
15 to --

16 MS. ROBESON: Okay.

17 MR. THAKKAR: Right? But it would, the covenant
18 would be regardless.

19 MS. ROBESON: So, in the first sentence, if I say
20 open space area?

21 MR. THAKKAR: Correct. Yeah.

22 MS. ROBESON: How's that?

23 MR. THAKKAR: It says open space area.

24 MS. ROBESON: Oh. It does in the beginning.

25 MR. HARRIS: Right.

1 MR. THAKKAR: Yeah.

2 MR. HARRIS: I think that is the most accurate
3 way.

4 MS. ROBESON: Oh. It is qualified in the first
5 part of it. Okay. I think if you could identify it on the
6 SDP so the council knows what it's deciding. That would be
7 helpful.

8 MR. THAKKAR: We will do that.

9 MR. HARRIS: Ms. Robeson, were you also suggesting
10 that the SDP and HPC spelled out?

11 MS. ROBESON: Yes.

12 MR. HARRIS: Okay.

13 MS. ROBESON: And then input would be changed to
14 advice.

15 MR. HARRIS: To advice. Correct.

16 MS. ROBESON: Do you have any questions based on
17 what I just asked or do you have any --

18 MR. BROWN: No. But I did have one very brief
19 follow up based on Mr. Harris' redirect if I might?

20 MS. ROBESON: All right. Go ahead.

21 RE CROSS EXAMINATION

22 BY MR. BROWN:

23 Q Mr. Thakkar, I want to show you your Exhibit 32A,
24 page 2. Just to go through this quickly, let me tell you
25 what I think it says, and you can tell me whether you agree

1 with me or not, it shows a tree inventory taken on September
2 21, 2010 with 128 trees on or near the property of diameter
3 of six inches or more, and shows in the shaded area those
4 that are significant or specimen trees, that is 24 to 30
5 inches, well, for significant and 30 inches or more for
6 specimen. Is that right?

7 A I think so.

8 Q And it shows that each one of these 128 trees,
9 what the condition of that tree was as of that time. Is
10 that right?

11 A It does.

12 Q And this would include the trees along the right-
13 of-way on Springvale. Right?

14 A I don't know if it includes those trees, and I say
15 that because the five point two five is gross tract.

16 Q Well, let me show you page 1.

17 MS. ROBESON: Page 1 of what?

18 MR. BROWN: 32A.

19 MR. THAKKAR: Okay. Yes.

20 BY MR. BROWN:

21 Q It does?

22 A I believe so.

23 Q All right. Do you have any reason to believe
24 sitting here today that the information that you provided to
25 this board in Exhibit 32A is no longer accurate with regard

1 to the condition of those trees?

2 A Our arborist has looked at this since that point
3 in time. So, this is not the most accurate information. I
4 couldn't tell you tree by tree but I did have Mr. Stire's
5 arborist take a look at the existing conditions and they've
6 changed somewhat since this date.

7 Q Did he tell you anecdotally, summarily, or in any
8 other fashion that there's been a significant degradation of
9 the trees along Springvale?

10 A He did not. He said there was some degradation
11 throughout the site, not specific to Springvale.

12 MR. BROWN: Thank you. Nothing further.

13 MS. ROBESON: Mr. Harris?

14 MR. HARRIS: That is all the rebuttal testimony we
15 have.

16 MS. ROBESON: Okay. We're going to take a five
17 minute break and then we will go to closing arguments or do
18 you not want to take a five minute break?

19 MR. BROWN: I don't need a break.

20 MR. HARRIS: Either way.

21 MS. ROBESON: Okay. Well, let's go then.

22 MR. GURWITZ: May I ask a minute to turn on my
23 computer to help the closing arguments?

24 MS. ROBESON: Yes.

25 MR. BROWN: Who's going first?

1 MS. ROBESON: What?

2 MR. BROWN: Who's going first?

3 MS. ROBESON: Who's on first? What I'm going to
4 do is let the applicant go. Then you will get an
5 opportunity to go and then the applicant will get a brief
6 follow up. That's typically the way we do it. Okay. We're
7 taking a five minute break. All right?

8 (brief recess.)

9 MS. ROBESON: Okay. Mr. Harris?

10 MR. HARRIS: Good afternoon. For the record, Bob
11 Harris. I want to first thank the Hearing Examiner for the
12 extra hour she put in on several days into the evening and
13 to even more so for being patient with my sometime lengthy
14 cross examination and my sometimes lengthy witness
15 testimony.

16 You had pointed out in the first go around that
17 there were gaps in the testimony, and we wanted to be
18 certain that the record was complete this time so that your
19 decision would be made easier. So, we hope we've not
20 overdone that.

21 The R-T 15 application was a close call. The
22 planning staff and the planning board both supported it.
23 You struggled with it due to those gaps and a search for a
24 lower density. But four of the council members did support
25 it. The other five wanted more information and some

1 revisions to it but their remand order is very clear in
2 terms of the three issues on which they were looking for
3 further advice, and I'm not going to quote from that.
4 You've seen it many times. But, that has been our guidepost
5 for this resumption of the hearing.

6 We believe the additional information we've
7 provided, and frankly, some that the opposition has provided
8 and as well as the revisions we made to the zone from R-T 15
9 to R-T 12.5, and changes to the schematic development plan
10 itself, and lastly, the binding elements that we have added,
11 all address the three issues that the council wanted to be
12 addressed. So, we think we've presented for you a tight
13 package.

14 We note that in doing that, the historic
15 preservation commission staff, the planning staff, and the
16 planning board all support the application for the R-T 12.5,
17 and this includes additional consideration of further
18 testimony by the opposition, and further documentation by
19 the opposition with respect to the historic setting, in
20 particular, but also some other issues that they had brought
21 up at the planning board.

22 This time, though, even considering that evidence
23 and, in fact, in light of that evidence, the planning board
24 voted unanimously, five out of five, to recommend approval
25 of this. That included Commissioner Presley who had been in

1 the minority the first time because she was uncertain about
2 the historic setting and, I think, had some questions about
3 the density. With the additional evidence and the revisions
4 to the plan, she, too, voted to support it.

5 It's our belief that with the planning board being
6 the lead agency, lead land use review body in terms of
7 development applications, that their recommendation to you,
8 and it is just a recommendation to you, we recognize that,
9 but that it is entitled to great weight because of the
10 careful consideration they've given and their expertise on
11 this.

12 Turning to the issues, the historic preservation
13 issue and the uncertainty with respect to the size. Again,
14 the HPC staff, planning board staff, and the planning board
15 themselves did review this very thoroughly and in their
16 transmittal to you, they have confirmed that the setting is
17 37,056 square feet, and that they do not believe it would
18 become one point four acres even if the Chelsea School were
19 to sell the property, and it were to be redeveloped as
20 proposed here.

21 As you've heard us say many times, we think the
22 body of the master plan is very clear and the discussion
23 really need not go beyond that. In the first part of the
24 hearing, and in your recommendation, you did point out that
25 you thought you could go beyond the clear language of a

1 master plan if there was, I forget your word, but I think it
2 was convincing evidence in the legislative history that
3 suggested something to the contrary. We hold here that
4 there is nothing that is clear and convincing in the
5 legislative history to suggest that the clear language of
6 the master plan should not be adhered to, and you can apply
7 that principle first to the body of the master plan where
8 the language is most simple, and it says simply 37,000
9 square feet.

10 But, even if we assume that the appendix has some
11 role in interpreting the language of the body, it, too,
12 really comes to the same result. It says that the
13 environmental setting will be 37.056 square feet if the
14 Chelsea School special exception is approved. That was a
15 revision to earlier language in some of the early drafts
16 that talked about if the Chelsea School special exception
17 goes forward, and we think that's fortunate, really, because
18 a condition of a special exception being approved is a very
19 definitive item. It can be determined very easily, and in
20 this case, it has been determined. There is no doubt. No
21 one disagrees that the special exception was, in fact,
22 approved so that even if the appendix were controlling here
23 and, again, we maintain its not, the condition precedent in
24 that appendix that would establish the 37.000 square feet
25 upon approval of the special exception has been met.

1 Now, the opposition has tried to paint a picture
2 here where the planning board first made a mistake or
3 somehow or other transmitted a plan to the county council
4 that didn't mean what it said and that they didn't really
5 mean to be recommending a 37.000 square foot setting to the
6 county council. You've heard Mr. Thakkar express his
7 puzzlement as to that, and I do as well. I've worked before
8 the planning board many years, and I know how careful and
9 deliberative they are, and I believe they mean what they
10 say.

11 The opposition further would suggest that not only
12 did the planning board somehow or other transmit something
13 in error or something that they didn't mean but that then
14 the council didn't adopt what it meant to adopt either, and
15 that goes even further. There really is no evidence to
16 that. There's a lot of speculation but the records don't
17 say that. THE records show that the planning board
18 transmitted a plan and that the council had only one plan
19 before it, one that said the environmental setting is 37.000
20 square feet period in the body. Again, even considering
21 that they had before them an appendix that said if the
22 special exception is approved, it would be 37,000. Again,
23 no difference because that condition precedent was met.

24 Now, the opposition has expressed some surprise
25 and concern that they couldn't find detailed records in the

1 planning board records that explained every step of the way
2 in the master plan process. I don't find that surprising at
3 all. It's 12 years later. Longer than that from when the
4 plan started. These records are not maintained like tax
5 records or something like that and the master plan drafting
6 process is, I think, Mr. Brown even used the word, and
7 iterative process. It's constantly evolving. I've
8 participated in many of these master plan writings and
9 planning board members are constantly being, you know,
10 consulted by their staff through the process in order to
11 draft the master plan.

12 So, what is clear is that they did send to the
13 council a master plan that says 37,000 square feet in the
14 body and that had a two part recommendation in the appendix
15 that the council then had that same exact language and that
16 language did not change throughout the council's
17 deliberation over, I think, about eight months. They
18 adopted, I think, in August, and I think it was transmitted
19 to them in either December or January.

20 They were told, as you heard, on May 9 by the
21 applicant or by the counsel for the Chelsea School that the
22 special exception had, in fact, been granted. So, they
23 certainly knew that at the time they adopted the master
24 plan, and as Mr. Thakkar has opined, that suggests no need
25 for them to change the language in the appendix to conform

1 precisely with the body of the master plan because it
2 conformed, in effect, anyway, again the condition precedent
3 having been addressed.

4 What is missing here is any evidence that there
5 was not a dual option but a triple option recommendation.
6 Thirty-seven thousand being the first option. The second
7 option being or the other one relating to whether the
8 special exception was approved or not. But, the suggestion
9 by the opposition being that there is yet a third scenario
10 that if the Chelsea School later sold the property that it
11 would become a different environmental setting of one point
12 four acres. There really is nothing in the record that
13 substantiates that. There is an email from Jean Arthur, a
14 legislative analyst for the county council in which
15 conjectures some possible alternative scenario. But, with
16 all due respect to Ms. Arthur, she's a legislative analyst.
17 She's not a council member. Her job is not to interpret
18 what the council did or what the master plan means today. I
19 think, you know, we clearly have to take the plain language
20 of the master plan and the plain language of the appendix to
21 the extent you want to apply that as considered by the
22 planning board, now in retrospect, as governing here, and
23 that leads us to a conclusion that the environmental setting
24 is today 37,056 square feet and that it will not change if
25 the Chelsea School sells the property to EYA.

1 As Mr. Thakkar has explained, irrespective of what
2 line they were drawing, we think the end result here is as
3 good, in fact, we believe better, than what it would have
4 been, and in the end, that's what historic setting
5 designation is all about. There's no magic to it. There's
6 no precision as to where an environmental setting is drawn.
7 It's, you know, what will make sense in a changing world and
8 will enable the historic resource, itself, the house, to be
9 preserved.

10 What we have here is a situation, and you've seen
11 the aerials, there are several non-historic buildings within
12 the historic setting. They're going to be removed. The
13 whole end of the block is going to be opened up to provide
14 better views of the house from the neighborhood and for
15 those traveling the streets. It will be returned to
16 residential use and it'll have public access over a good
17 portion of it. We maintain that that is exactly the type of
18 result that a master plan envisions and that is the goal of
19 historic preservation.

20 With respect to density and massing, I made the
21 note early on in this hearing that the zoning approval does
22 not determine the size, the location, the design of the
23 units. It doesn't fix any forest conservation requirements.
24 It doesn't determine storm water management requirements,
25 the adequacy of utility service, or the final access

1 details. It looks at these in a very general way to make
2 sure that something under that zone is approvable and
3 consistent with the public interest leaving to the planning
4 board at a later date the details. So, we think we have
5 addressed those issues in sufficient detail at this point in
6 the process for this to go forward to the council.

7 As Mr. Thakkar has indicated, the density has been
8 reduced significantly. The green space has been increased.
9 We pulled back from the Riggs-Thompson house. We've added
10 additional green area along the Cedar Street. That was one
11 of the hearing examiner's specific recommendations, and
12 we've provided evidence that RT zoning, that comparable and
13 sometimes higher densities adjacent to single family
14 development exists all over the county in Silver Spring and
15 elsewhere.

16 Every case is different and so we're not trying to
17 say any one of these cases is identical to ours because it
18 clearly isn't but the variety of them and the variety of
19 settings in which they're located, most of which are
20 directly adjacent to single family homes, shows that this
21 density can be and has been determined to be compatible with
22 single family homes. Many of those sites, as you heard, are
23 less urban than our site and less transit oriented. So, we
24 think that this is even a better case for densities as we
25 propose than many of those. And, of course, the design

1 features and the binding elements that we've offered
2 optimize the compatibility.

3 We were pleased that Mr. Doggett embraced our
4 design orientation in his second redo at a concept. We
5 think it's very similar from an organization and orientation
6 standpoint. It has very similar massing to what we are
7 proposing, and we take that as a compliment, really. We do
8 think that while it's fewer units, it does not measurably
9 improve massing over the improvements that we've already
10 made through our R-T 12.5.

11 With respect to the road alignment, there being
12 two sub issues here. One being the location and design of
13 the road. Again, you've heard multiple pieces of testimony
14 on this. Clearly, that design and location is approvable.
15 In fact, it's largely approved even at this point in time
16 but the planning staff and the planning board have reviewed
17 it and they are okay with it. In fact, they support it.
18 DOT has now confirmed that it is okay. DOT, by the way, had
19 always been okay with a road accessing Springvale Road.
20 Initially, they thought it should be further to the west
21 because they had concerns about site distance. But, when
22 they were provided data that examines the site distance in
23 more detail and considered the traffic on that road, they
24 signed off and so that location is absolutely approvable at
25 this point in time. Again, it will be refined or not

1 refined, confirmed, at the time of preliminary plan and site
2 plan.

3 Cut-through traffic has been, really, the issue
4 that has been woven throughout this hearing from the outset.
5 There's been speculation by some of the opponents who have
6 been opposed to this project for any number of reasons that
7 by having a connection to Springvale Road there'll be
8 considerable cut-through traffic in their neighborhood. No
9 real evidence of that. In fact, no evidence whatsoever. To
10 the contrary, the evidence that is in the record, is the
11 evidence that we've put in through the planning board, and
12 it's opinion and it's staff's opinion, as well, that it
13 would not lead to a cut-through traffic and our expert
14 witness. Even the witnesses, the opposition witnesses, have
15 said time and again, there is not an existing cut-through
16 traffic problem in the neighborhood, that the traffic
17 restrictions work, that they obey them, and that they would
18 obey future traffic restrictions such as those applicable to
19 the Chelsea Court project.

20 Our evidence has shown that there is no time
21 saving to cut-through the neighborhood and while Mr. Millson
22 questions that, he also affirmed that the numbers there are
23 accurate. Our engineer spent considerable time in the
24 neighborhood not just doing those travel time runs but doing
25 traffic counts and observing traffic movements, and he has

1 indicated that he does not see a traffic cut-through problem
2 there, and that he does not believe there will be one, in
3 his expert opinion, if this project is approved with the
4 measures that we've addressed.

5 Talking about those measures. In order to ensure
6 that there will continue to be no cut-through issue in the
7 neighborhood, we've added various design features for
8 private street A. We've agreed to replicate the same type
9 of signage and perhaps even more direct signage to prohibit
10 that to include physical barriers that will, as I say,
11 replicate what is in the neighborhood today.

12 We've proven that the traffic laws, turn
13 restrictions will be enforceable. We have DOT's agreement
14 to work with us on that, and we have committed through a
15 binding element to seek that approval. So, we have every
16 expectation that those signs will be in place and will be
17 enforced by the police department. To the extent they
18 weren't, we've also offered evidence about the even more
19 rigid penalties for trespassing. None of us would trespass
20 on somebody else's yard or property particularly if there's
21 a sign that prohibits that, and we believe that that type of
22 prohibition in this neighborhood will doubly, triply,
23 quadruply ensure that there won't be cut-through traffic.
24 Keep in mind that to the extent that the SOECA neighbors
25 don't want cut-through traffic in their neighborhood,

1 neither do the new residents of Chelsea Court. In fact, I
2 would maintain that the new neighbors in Chelsea Court being
3 closer to private road A and being in a close knit community
4 as they are, they're going to be more concerned about cut-
5 through traffic than anybody in the entire neighborhood and
6 given that it is a private road that is entirely in their
7 control, they can do whatever they need to do to stop that
8 whether it be bringing actions against people for trespass
9 or other things, and so this is about the most certain
10 anyone could be that there wouldn't be cut-through traffic,
11 and it's a tighter restriction than actually the
12 prohibitions of cut-through traffic in the rest of the
13 neighborhood today.

14 I want to touch briefly on a couple of what I'll
15 call non-issues. There was some debate even before we
16 resumed the hearing about whether the historic setting could
17 be counted and how you calculate density and re-subdivision
18 issues. We submitted a legal memorandum on that. I'm not
19 going to go into that in detail but I will point out that
20 the planning board in their letter has affirmed our
21 interpretation of those laws and confirmed that practice,
22 policy, and laws are being met here in terms of these
23 density calculations.

24 The storm water management and sewer. Mr. Thakkar
25 addressed that. Again, that's not really a zoning issue and

1 it's not an issue that was on remand. We'll have to meet
2 the law. We believe the storm water will be improved. We
3 believe we'll meet all of the requirements and, quite
4 frankly, we can't forward if we don't.

5 Trees, another non-issue. In your first zoning
6 report, you commented that the tree issue, forest
7 conservation requirements, would be met or could be met. I
8 forget exactly your words, and no further discussion. There
9 was no issue about that. The council had no concern about
10 tree impact either. Again, knowing that we have to meet the
11 forest conservation laws, knowing that the planning board
12 has site plan and control over this, and will approve what
13 is appropriate at the time of site plan. So, this isn't a
14 zoning issue to begin with. It's a preliminary plan and
15 site plan issue, and it's definitely not an issue for remand
16 given the three issues and the limited nature of the review.
17 There simply was no question the first time around about the
18 adequacy of tree protection at least in your mind and in the
19 council's mind. We're going to meet the law.

20 In conclusion, we believe we meet the purposes of
21 the RT zone. In fact, the council's already made that
22 finding. As effectively, you did as well.

23 With respect to the public interest that you spent
24 some time addressing in your first report, you note that
25 there are three components of that, master plan conformity,

1 what the planning staff and planning board recommend second
2 and third, the impact on public facilities.

3 In terms of the master plan, I think you found the
4 first time that even the R-T 15 plan advances goals in the
5 north and west Silver Spring master plan and advances goals
6 of other county policies such as the housing policy. It
7 eliminates a non-residential use in a residential area. It
8 reinforces a transition from the CBD to the single family
9 detached area, creates housing opportunities, provides
10 sidewalks, provides open space for public use. All of those
11 things existed under the R-T 12.5 plan or under the R-T 15
12 plan as determined then, and they're amplified now in the R-
13 T 12.5 plan.

14 So, we think you can check that box, if you will.
15 The master plan being silent as to what the future land use
16 of this particular piece is, it's not as clear cut as some
17 other rezoning cases but we address enough of those policies
18 and goals that we believe that's a positive here.

19 The planning staff and the planning board couldn't
20 be more specific in their unequivocal endorsement of this
21 plan, unanimous now by the planning board.

22 And lastly, the impact on public facilities was
23 addressed before. There really was no impact on public
24 facilities before to the extent there is any relationship.
25 That has been lessened because this is fewer units in a more

1 appropriate manner, and so we believe we've done what the
2 council asked us to do and have brought back to you and to
3 them a great plan for the reuse of this property in the
4 future that addresses many, many objections, and we thank
5 you for being patient with us.

6 MS. ROBESON: Thank you. Mr. Brown?

7 MR. BROWN: I promised you some oral argument on
8 the legal issue in this case. I basically see there's only
9 one issue of statutory interpretation in this case and
10 having to do with the inclusion of the historic setting in
11 the gross tract area. In order to follow me along in this
12 argument, you basically need to have or access to three
13 different exhibits, 286, 323, and 327D.

14 I'll start by sort of briefly summarizing Exhibit
15 286 which is my letter to the planning board where I raise
16 this issue.

17 MS. ROBESON: Okay. You can go ahead. I know
18 where it is.

19 MR. BROWN: That exhibit shows you three different
20 plats that outline the planning and re-subdivision history
21 of this property. The first plat, 439, from 1932. The
22 second plat is 2501 from 1950, and the third plat is 22270
23 from August '02. I'm going to focus for now on the third
24 plat.

25 What happened was that that plat combined parcel A and

1 parcel 73 into one large lot, 58. What my letter to the
2 planning board details is that they did this so that the
3 school did not cross a lot line, and the planning board also
4 concluded that although this lot is much larger than would
5 typically be allowed in the R-60 zone, they decided to waive
6 compliance with the section 50-29(b)(2) subdivision
7 requirements. But, they did say that the validity of the
8 preliminary plan would be dependent upon compliance with the
9 special exception conditions.

10 The particulars of the plat that was approved by
11 the planning board, this is plat 22270, condition 8, says
12 development is subject to the terms and conditions of
13 preliminary plan 1-00013, and I outline in my letter the
14 conditions of that plat and that preliminary plan and they
15 say, essentially, that the validity of the preliminary plan
16 is dependent upon the applicant abiding by and complying
17 with the conditions of approval of the school special
18 exception.

19 So, we're not really saying that the plat expires
20 but we're saying that the validity of the plat basically is
21 coterminous with the existence of the continued compliance
22 with the special exception conditions on the site which end
23 with the, effectively end with the transfer of the property
24 to EYA which in turn is tied to its approval of the
25 rezoning.

1 Now, what EYA has done in their rezoning
2 application is to compute the density and the 50 percent
3 green area requirements based on use of the entire gross
4 tract area of lot 58 and the dedicated right-of-way around
5 that lot, and they have acknowledged that they will need a
6 new plat and the effect of this process, rezoning process,
7 is that lot 58 will, effectively, become history. There
8 will no longer be a lot 58. There will be new lots on the
9 property including a lot for the Riggs-Thompson House.

10 And what we've shown in this letter is that if the
11 Riggs-Thompson House environmental setting stays at the
12 current point eight five acres, there will be no density
13 problem on this property. But, one of the market rate units
14 would have to be converted to MPDU in order to comply with
15 the standards if you exclude that lot from the gross tract
16 area.

17 We've also shown that if you exclude one point
18 four acres, the original parcel 73, from the gross tract
19 area then the maximum density that you could achieve on this
20 property is 58 or 59 units with 10 or 11 MPDUs. Under that
21 scenario, the project is both too dense and has too few
22 MPDUs. Under the earlier, under the proposed scenario, all
23 that would be required would be the conversion of one of the
24 63 units to an MPDU.

25 MS. ROBESON: I guess I'm missing the link that

1 says, I mean, they're going to have to re-subdivide, and
2 it's going to be one tract. So, why are they held to the
3 lot configuration on the old tract.

4 MR. BROWN: No. It's not going to be one tract.
5 There are going to be multiple lots on this property.

6 MS. ROBESON: Well, there's going to be feets --
7 but the point is -- you're right. There's going to be
8 multiple fee simple lots on the tract but it's going to be a
9 new record plat, and I guess I don't -- I'm missing the link
10 between why you can't do that. I don't understand why you
11 can't record a new plat, and why you can't base density on
12 the -- I mean, it seems we have had several cases in here
13 with multiple properties.

14 MR. BROWN: All right. I wanted --

15 MS. ROBESON: The density is calculated based --
16 rezoning cases, the density is calculated on the gross tract
17 area of the multiple properties combined and I --

18 MR. BROWN: I understand. I want to take you
19 through a hypothetical example that removes the complexity
20 of the historic setting from the example to illustrate why
21 there's a problem.

22 MS. ROBESON: Okay.

23 MR. BROWN: If you would look at plat 2501 which
24 is the second plat in my letter, Exhibit 286.

25 MS. ROBESON: Okay.

1 MR. BROWN: You see that plat?

2 MS. ROBESON: Yes.

3 MR. BROWN: The condition of the property in 1950
4 was that this -- there was a reserved area for the Riggs-
5 Thompson House. There was parcel A, three point four zero
6 four acres undeveloped and then there were these, also on
7 the block were these nine single family residential lots.
8 You see those there?

9 MS. ROBESON: Along Cedar Street.

10 MR. BROWN: Along Cedar Street. Now, in my
11 hypothetical, I'd like you to imagine the following
12 scenario. That this is still a condition of the property
13 today. There are nine homes along Cedar Street. Parcel A
14 is undeveloped, and the reserve property has been acquired
15 by PEPCO and PEPCO, for public relations and other purposes,
16 has significantly upgraded and made the historic property an
17 attraction or something to be valued and preserved. It is
18 not owned by -- and all of the other property, parcel A and
19 all of the nine town homes are under contract for sale to
20 EYA. All right? Are you following me?

21 MS. ROBESON: Yes.

22 MR. BROWN: There's no historic issue about
23 historic setting. Under this scenario, what EYA is saying
24 that they are perfectly allowed to do is since they own all
25 the property that they propose for rezoning to R-T 12.5 that

1 they will calculate the density and the green area based on
2 all of the property in parcel A and the nine homes that sit
3 on lots 1 through 9. That's what they are saying they are
4 allowed to do. That's their reading of the code, and lets
5 hypothesize further that EYA has absolutely zero intention
6 to redevelop those single family homes along Cedar Street.
7 All they want to do is borrow the density and the green area
8 from those town homes to enhance the density that they can
9 achieve on parcel A, and I say to you that they can't do
10 that because the zoning code prescribes a specific situation
11 in which this kind of borrowing can take place and it would
12 not be allowed except with compliance with those standards
13 in the zoning, and that section of the zoning code is
14 section 59-A-6.2. This section provides incentives for
15 individual owners to renovate existing historic structures
16 and to make these properties economically viable in a way
17 which contributes to the overall historic character.

18 If there is no need for rezoning on those nine
19 properties, that they are perfectly fine and are going to be
20 perfectly adaptable to continued use in R-60 zoning, there's
21 no justification for rezoning them to R-T 12.5 just because
22 the applicant has them under ownership for contract. What
23 the focus of the RT zoning should be should, in my
24 hypothetical example, be on parcel A where they propose to
25 put town homes. There shouldn't be any borrowing.

1 Now, what Mr. Harris says in his argument is we
2 have cited no authority that they can't include, in the
3 gross tract area, other property on the block that they
4 include, and I would point Mr. Harris to the Mossberg case,
5 Mossberg v. Montgomery County.

6 MS. ROBESON: That was a special exception case,
7 though.

8 MR. BROWN: Yes. It was. But I'm going to read a
9 legal principle from that case which I think has
10 applicability here. The citation is 329 Md. 494, 620 A.2d
11 886. In this case, the issue was certain questions about
12 when a super majority requirement is required, and what the
13 court said was, in support of its holding in that case, "the
14 court has regularly held that where the legislature in a
15 statute expressly authorizes a particular action under
16 certain circumstances, the statute ordinarily should be
17 construed as not allowing the action under other
18 circumstances.

19 So, I would say to you that when they propose to
20 obtain incentives from including the historic structure in
21 their application because that property is under their
22 ownership or control, in order to make those properties
23 economically viable under the purposes set forth in section
24 59A-6.2, they're bound to comply with the constraints of
25 Section 59A-6.2, and one of those constraints is that the

1 only development standard that can be adjusted is the
2 density of the property based upon a transfer from the lower
3 property, the R-60 property, to the higher property, the RT
4 zone property but you can't transfer any green area
5 requirement or any green area space from the lower density
6 property to the higher density property.

7 The effect in this case of looking at the green
8 area of the entire tract rather than the green area of
9 parcel A which is really what we're talking about here is
10 that this property cannot meet the green area requirement
11 whether the tract area is point eight five or one point
12 four. As shown in my letter, Exhibit 286, at point eight
13 five acres, the green area for parcel A is 44 percent and at
14 one point four acres, the green area on parcel A is 36
15 percent of the gross tract area. So, they flunk the green
16 area test either way. But, under section 59A, section
17 6.2(1)(f), you cannot do this kind of density transfer
18 unless you meet all of the other requirements of the zone,
19 and it doesn't meet the green area requirement.

20 MS. ROBESON: But, I don't see -- just because the
21 Chelsea School is leaving, I don't see that as invalidating
22 the plat. I mean, the plat -- I don't think it invalidates
23 the plat by operation. What you're saying, what I think
24 you're saying is that the minute the Chelsea School leaves
25 the property, the plat's invalidated as a matter of law and

1 it reverts back to parcel 73 and the other parcel. I can't
2 remember what it was. And that's, I mean, I can't see that
3 link. I can't see that link under the ordinance either.
4 The plat doesn't get invalidated by operation of law or not
5 that I'm aware of.

6 MR. BROWN: I think one has to look at the
7 conditions of approval of the preliminary plan and
8 understand what happened at the time and that that history
9 is entirely relevant to how this should be regarded going
10 forward. The gist of the problem was that his huge lot, 58,
11 would never be allowed in a residential zone but for
12 facilitating this institutional use which is deemed
13 compatible in an R-60 zone, and when that goes away, you are
14 back to the issue of whether or not the property should be
15 considered having, being able to take advantage of this
16 large lot which is incompatible with and, basically, in
17 violation of the standards that were waived in order to
18 facilitate its creation for the school.

19 I'm not saying that the plat goes away by
20 operation of law. Obviously, for continuity purposes, that
21 plat stays in effect until a new one is recorded but I think
22 we are just, we are overlooking the reality of the situation
23 when we ignore that a new plat has to be recorded and that
24 new plat ought to take into account the very limited
25 circumstances and conditions under which that preliminary

1 plan was approved back in 2000 and those conditions were
2 that effectively that the preliminary plan is valid only so
3 long as the Chelsea School is effectively operating on the
4 site. So, I just believe it's --

5 MS. ROBESON: I understand.

6 MR. BROWN: I believe it's overly technical to say
7 that we would have to prove that the plat expires by
8 operation of law. I'm looking at the substance of the
9 matter, not just the form.

10 MS. ROBESON: Okay.

11 MR. BROWN: I believe, in general, that
12 particularly in light of the proscriptions in section 59A-
13 6.2 that There is no occasion here for sort of a free-
14 wheeling approach to providing incentives to a developer to
15 include properties that go beyond the limited providing of
16 incentives for redevelopment and protection of historic area
17 properties that is specified in that section of the code
18 under the rubric of that statutory principle laid down in
19 the Mossberg case where they cite numerous cases for that
20 proposition going way back.

21 MS. ROBESON: But the statute by its terms refers,
22 well, it's my recollection it refers to multiple only when
23 you're dealing with multiple, two properties, more than one
24 property. Perhaps I'm incorrect but I'm pretty sure it does
25 which means I have to ignore the existing plat again.

1 MR. BROWN: Well, again, that gets to substance
2 versus the form.

3 MS. ROBESON: I see.

4 MR. BROWN: I think that whether you look at my
5 hypothetical example or you look at the real example, I
6 think implicit in the way the code has been set up, the
7 council has the responsibility in a rezoning case to look
8 closely at the question of whether or not the gross tract
9 area proposed by the applicant is the right gross tract area
10 for the rezoning. I don't think that the applicant simply
11 has unilateral freedom, free of counsel scrutiny, to say
12 this is our gross tract area because we own it all. The
13 council, particularly when the effect of that decision is to
14 add to the ability of the applicant to increase the density
15 or in some fashion or another.

16 In this case, there is more than enough incentive
17 for the protection of that home by approval of a rezoning of
18 parcel A or the portion of the property that used to be
19 called parcel A and effectively doubling or even more than
20 doubling the density of that property from the existing R-60
21 zone. That is a huge economic gift from the government to
22 the applicant, and if the applicant can't find in that gift
23 adequate incentive to actually do some preservation on the
24 historic property, and I know in this case that there is no
25 binding element or proffer that there is going to be any

1 historic preservation on that property --

2 MS. ROBESON: I thought that was included on the
3 schematic development plan that the noncontributing
4 structures are going to be removed and, well, I'll have to
5 look again.

6 MR. BROWN: Then what? And then what? And then
7 what? This property might be sold to somebody who will have
8 no obligation to upgrade the historic elements of the
9 property whatsoever. It's just hoped for, and it will come
10 at the expense of the purchase, not at the expense of the
11 developer.

12 So, they're getting all of this monetary value
13 from increased density, and their getting the added benefit
14 of including this area in their gross tract area, and I
15 don't see where they're putting out very much in the way of
16 actual dollars for the actual real preservation of the
17 property anyway. But, putting that issue aside, and we're
18 not really objecting on that basis. What I'm saying is
19 there's more than enough incentive to, in the process of the
20 rezoning itself and not adding to it in the fashion that
21 they propose except through strict compliance with section
22 59A-6.2. That's the essence of the argument.

23 MS. ROBESON: All right.

24 MR. BROWN: Now, I'd like to turn now to my basic
25 closing. Okay. The bottom line for SOECA and the neighbors

1 in opposition is that EYA revised schematic development plan
2 fails to adequately respond to the concerns that caused the
3 council to reject their initial 76 town home unit plan. You
4 all too well the scope and substance of those concerns so
5 I'll not take the time to recap them here but I do want to
6 share a thought on how this case evolved. One, which for
7 me, answers the question of why we had to spend so much time
8 and energy dissecting a plan that was ultimately rejected
9 before we ever got to this remand hearing. It also answers
10 for me, and I hope for you, why the planning board's
11 favorable recommendation on the revised plan deserves very
12 little, if any, weight in your evaluation and
13 recommendation.

14 I tried to put this picture together for you. I
15 was drawn to my second hand knowledge of my son's travel
16 adventures which include working for the publishers of the
17 Rough Guide travel books. He, not I, has been to Istanbul.
18 His tales came back to me and I found the following
19 yesterday in the Lonely Planet website guide to Istanbul
20 regarding the magnificent Kapali Carsisi covered market or
21 grand bazaar in Istanbul. I just want to briefly digress
22 with this quote. Established by Mehmet the Conqueror after
23 he stormed into the city in 1453, the bazaar was the
24 commercial center of the empire for centuries. It still
25 houses over 2,000 permanently busy retail outlets. Many of

1 these have adopted the modern practice of set pricing but
2 some, predominantly the carpet shops, still take pride in
3 practicing the ancient art of bargaining.

4 If you are visting Istanbul and are keened by a
5 carpenter rug in the bazaar, the following tips could be
6 helpful. The official prices here have almost always been
7 artificially inflated to allow for a bargaining margin.
8 Twenty to 30 percent is the rule of thumb. Shopping here
9 involves many aspects of autumn and etiquette. You will
10 drink tea, exchange polite greetings, and size up how
11 trustworthy the shop keeper is. He, in turn, will drink
12 tea, exchange polite greetings, and size up how gullible you
13 are. Never allow yourself to feel pressured to buy
14 something. Tea and polite conversation are gratis. If you
15 accept them, you don't need to buy anything in exchange.
16 It's important to do your research. Always shop around to
17 compare quality and pricing. Before starting to bargain,
18 decide how much you like the carpet or rug and how much
19 you're prepared to pay for it. It's important you stick to
20 this. The shop keepers here are professional bargainers and
21 they have loads of practice in talking customers into
22 purchases against their better judgment.

23 Your first offer should be around 60 percent of
24 the initial asking price. The shop keeper will laugh, look
25 offended and profess to be puzzled. This is all part of the

1 ritual. He will then make a counter offer of 80 to 90
2 percent. You should look disappointed. Explain that you
3 have done your research and say you are not prepared to pay
4 that amount. Then you should offer around 70 percent. By
5 this stage, you and the shop keeper should have sized each
6 other up. He will cite the price at which he's prepared to
7 sell and if it corresponds with what you are initially happy
8 to pay, you can agree to the deal. If not, you should
9 smile, shake hands, and walk away.

10 I think EYA and Townhouse Development is just as
11 shrewd as the Grand Bazaar rug merchants. Nor is EYA to be
12 scorned for trying to negotiate the best deal they can get.
13 As EYA's numbers have evolved in this case, they parallel
14 fairly closely the quantitative give and take that is proved
15 over centuries to be most effective whether intentionally so
16 or not.

17 The point is that 76 units was an artificially
18 inflated number with a hefty bargaining margin. EYA has
19 sized up its customer, the council, and concluded that it
20 will not smile, shake hands, and walk away at a mere 17
21 percent reduction in the "official price" or, really, an
22 under 10 percent reduction if we look at massing rather than
23 the number of dwelling units. But, the evidence presented
24 makes clear that with your recommendation, the council can
25 and should walk away from this offer. It is well short of

1 what is the best outcome for this property.

2 The evolution of the plan also makes clear that
3 while you and the council effectively recognize that EYA did
4 not put its best foot forward the first time, the planning
5 board was as gullible as the tourist that accepts the rug
6 merchants first offer. How can you give any credence to a
7 staff or board recommendation in these circumstances except
8 as an acknowledgment that the plan is improve which, of
9 course, is not the proper standard of judgment for you or
10 the council.

11 Before turning to the details, a brief comment on
12 Mr. Harris' oft repeated emphasis and again, in closing
13 argument, on the notion that this plan is not necessarily
14 the final plan and thing could change in terms of, you know,
15 the size and location of the buildings at site plan and the
16 review process before the planning board. The implication
17 here is that the residents need have no fear. The plan can
18 only get better with staff and board scrutiny. Why anyone
19 would have any confidence that with successive development
20 plan approvals to its name, either the staff or the board
21 would be a model of careful scrutiny is beyond me. What
22 will happen is completely predictable. EYA will seek
23 approval of a site plan that is in all material respects
24 unchanged from the development plan. This is just what is
25 expected under the zoning ordinance. I refer you to section

1 59H-2.5(3)(h). Once an SDP is approved by the council, the
2 site plan to be reviewed by the planning board "must", "must
3 conform". That's the language in the statute. "Must
4 conform" to it.

5 So, now is the time to get it right. My clients
6 cannot depend upon the board to make any meaningful change
7 in the interest of compatibility with the surrounding
8 neighborhood once the SDP is approved.

9 Let me turn now to density and massing. EYA's
10 revised plan does not comply with the order that density and
11 massing be reduced enough to achieve compatibility with the
12 surrounding neighborhood and greater consistency with the
13 master plan. As the district council found at page 10 of
14 its resolution "it is difficult to say that the density,
15 massing, and scale of rows of townhouses have a relation to
16 the smaller, older, single family detached homes surrounding
17 the subject property".

18 These R-60 single family detached houses define
19 the character of the area north of Cedar Street, a character
20 that is not changed by the outlier Colesville Tower or the
21 low impact Springvale Terrace Retirement Community. In
22 assessing whether density and massing of the current plan
23 are compatible with the community, the standard, again, is
24 not that of the gullible shop keeper and the prudent of the
25 rejected plan. Instead, the density and massing must be

1 judged on their own merit. That includes assessing whether
2 the plan conforms to the planning principles of the master
3 plan which require protection of the existing surrounding
4 neighborhood. Reliance on Cedar Street houses as a
5 transition by use not by structure and also protecting
6 residential blocks further into the interior of 7 Oaks,
7 Evanswood.

8 Maybe in the future, a revised north and west
9 Silver Spring master plan will throw into that neighborhoods
10 with a high, single family residential neighborhoods with a
11 high walk score should be considered vulnerable targets for
12 redevelopment as RT town homes but it doesn't say that now.
13 What it says, it talks about protecting the residential
14 blocks further into the interior. So, I think since this
15 block is in the interior of the R-60 zoning, it has to be
16 looked at primarily from the point of view of the criteria
17 in the master plan not latter day criteria that might
18 possibly find their way into a new and improved master plan
19 down the road.

20 So, given this framework, what my clients have
21 reluctantly come to the practical realization that well,
22 town homes are going to be built on this site but it's
23 still, it's important to remember in judging compatibility
24 that this site is, in all respects, outside the CBD and
25 nowhere adjoins it, and it's the CBS that authorizes high

1 density residential housing and that's where it is, in fact,
2 been concentrated.

3 The site remains effectively surrounded by R-60
4 zoning as shown in Exhibit 151 with single family housing at
5 a density of six per acre on three sides and a library on
6 the fourth side, and it is only accessed by interior
7 neighborhood streets and behind an existing transition of R-
8 60 properties.

9 The revised plan continues to mask town homes
10 closely together in the center of the property in the very
11 manner that the district council found objectionable. It
12 still does not relate to the single family homes. The
13 current layout is eerily similar to the layout of the
14 rejected plan with 63 town homes aligned in 11 barrack style
15 rows oriented perpendicular to Springvale without any visual
16 breaks in these areas. After clear cutting the trees from
17 the building site, the parking alleys will slice through
18 three-quarters of the block. Although today, we have the
19 latest development of improvement is the adding of those
20 decorative walls.

21 And if you went through and did the calculations
22 of adding up the building footprints, we're down from 12
23 buildings to 11 buildings but if you multiply the lengths
24 and widths as shown on Exhibit 276A of the footprints of the
25 63 unit plan, you get a reduction of about 5,000 square feet

1 in the total building footprints. This is a nine point four
2 decrease in the total amount of building footprints compared
3 to a 17.1 percent decrease in the number of units. So,
4 although density has been reduced 17 percent, although my
5 clients don't regard that as an overly significant reduction
6 in its own right, little more than half of that level of
7 improvement is shown in the footprint change which has been
8 acknowledged to be at least one element in judging massing.

9 The density of 12.19 dwelling units per acre, if
10 we measure density over the entire property of five point
11 two five acres, as I said, more than two times the density
12 of the surrounding homes. Looking at what we regard as the
13 true density of how the site will be developed by excluding
14 the environmental setting, the density is even higher,
15 considerably higher, four point three as was shown in
16 Exhibit 314D. Fourteen point three dwelling units per acre
17 using the point eight five acre environmental setting or
18 16.3 units per acre using the one point four setting. And
19 also as shown on Exhibit 314D, the proposed density would be
20 higher in density than any of the other town home
21 developments in north and west Silver Spring even measure
22 density EYA's way.

23 Now, we've heard a couple of corrections. Mr.
24 Armstrong based his numbers on the density calculations, the
25 density numbers shown on the Montgomery County website.

1 But, whether his numbers or Mr. Thakkar's numbers are
2 correct, we are still way up at the high end of those
3 densities as shown on Exhibit 314D. Yet, we are dealing
4 with an interior neighborhood site surrounded by R-60
5 properties. Again, the issue in the future might tie this
6 kind of consideration to walk score. It does not now. I
7 think it's great that my neighbors, my clients, who are
8 neighbors to this property, have a good walk score in the
9 adjoining blocks but that is not a reason to threaten them
10 with basically incursion onto the master plan with an overly
11 dense development of this particular property at RT.

12 What would be much more appropriate is a density
13 level such as that of Woodside Way located on 16th Street
14 and 2nd Avenue, an arterial road, where the site is roughly
15 similar in size, four point five eight acres and at RT8 has
16 a density of just under six. That's on Exhibit 314D, and I
17 don't believe that one has been questioned by EYA.

18 Even several of the town home developments on
19 Georgia, another major highway, have densities of around
20 nine per acre. These are the levels of densities that would
21 be much more appropriate for the site, and Mr. Doggett's
22 concept plan illustrates how a much more appropriate density
23 could be achieved at this location still utilizing all of
24 the design elements favored by EYA.

25 It would include more than 40 town homes, reducing

1 massing by shortening the rows and splitting some rows in
2 half with the elimination of a middle unit. That was Mr.
3 Doggett's sort of oral modification of his drawing,
4 facilitating an increased staggering of buildings. His plan
5 could be further adjusted to accommodate a cul-de-sac if
6 that were preferred over a T intersection. Mr. Doggett's
7 plan was for 46 units. This could be achieved under RT8
8 zoning where the base number of units would be 42 and the
9 density bonus of 10 percent would mean seven MPDUs out of
10 the 46 or just one fewer MPDUs than EYA has proposed at a
11 density of 63.

12 Now, the town homes areas developments outside
13 this area, this northwest and west Silver Spring area that
14 EYA uses for comparison are irrelevant for purposes of
15 assessing compatibility. They just have nothing to do with
16 the SOECA community. I'm talking about the brownstones,
17 Potomac Park, Clarendon Market Commons, National Park
18 Seminary, Cameron Hill and Silver Spring. None are
19 comparable or compatible with the interior R-60 neighborhood
20 where the Chelsea property is located. And these other
21 developments as reflected in Exhibit 314E and testified to
22 by Mr. Armstrong are all in intensely developed areas or
23 abutting major highways, Metro parking lots, CBD zoning or
24 apartment buildings. Even so, most of them still do not
25 rise to the density level proposed here.

1 Reducing density and massing would also provide
2 the flexibility the site needs to address the critical
3 issues that have been raised in this case about protecting
4 more of the historic area, allowing sufficient space for a
5 cul-de-sac, allowing more creative grouping of town homes
6 and this would, you know, enhance the screening as well.

7 Reducing the number of units, reducing the
8 incidents of overflow parking on neighborhood streets.
9 Indeed, it is, you know, this whole concept of flexibility
10 of design standards is integral to the whole RT floating
11 zone process as compared to the, including the zone of R-60.
12 The district council found that the reason RT zoning is
13 appropriate for this site, you can look at the language of
14 the resolution at page 7, and you see that connection
15 between flexibility and rezoning this property right there
16 in the resolution.

17 So, the development has to effectively utilize
18 that flexibility to produce a compatible project free of the
19 problems we've identified that come from having little or no
20 space to make the adjustments that would enhance
21 compatibility.

22 You have those?

23 MR. GURWITZ: I do.

24 MR. BROWN: I just want to remind you of a little
25 bit, with a few pictures from one of the exhibits. This is

1 Mr. Ivaylo Gachev's slides, photographing the neighborhood.

2 MS. ROBESON: From the first hearing?

3 MR. BROWN: Yes, ma'am.

4 MR. GURWITZ: Yes. Tell me when to stop.

5 MR. BROWN: I think the rest are Cameron Hill,
6 aren't they?

7 MR. GURWITZ: No. There's a few different ones at
8 the end. This is our neighborhood.

9 MR. BROWN: Okay. Okay.

10 MR. GURWITZ: Okay?

11 MR. BROWN: That's good. You've seen, again, some
12 fresh reminders of the surrounding neighborhood. EYA has
13 the burden of proving that their proposed development is
14 compatible with this neighborhood. The development should
15 be compatible with the community in terms of density,
16 massing, green space, trees, tree canopy, and so on, and
17 this plan just does not measure up.

18 Mr. Iraola testified that the new plan with its
19 configurations is efficient but EYA was not directed to make
20 the plan more efficient. It was directed to make it more
21 compatible. The SOECA witnesses have placed in the record
22 examples of town homes that have some features that are more
23 compatible with this neighborhood such as more green space,
24 smaller clusters of town homes where the massing is broken
25 up and developments where a good number of mature trees were

1 preserved. Those are all in Exhibit 314F.

2 They also cited developments where connectivity is
3 established with walking paths that have a single entrance
4 for vehicles which limits the impact of traffic on the
5 neighborhood and reduces pedestrian/auto conflicts. In
6 pursuit of more density than appropriate, EYA has failed to
7 incorporate many of these compatibility features.

8 Turning now to the issue of compliance with the
9 master plan under this revised plan, it is still not in
10 substantial conformity with the master plan. The intent of
11 the master plan is "to preserve the existing residential
12 character and to reinforce the many desirable features of
13 the north and west Silver Spring neighborhoods. It also
14 notes that the neighborhood's best attributes should be
15 recognized, reinforced, and enhanced, and provides guidance
16 on protecting interior neighborhood including where town
17 homes could be built free from increasing development
18 pressure and reaffirming current zoning in interior areas.

19 THE master plan also recommends protecting
20 residential neighborhoods from commercial and through
21 traffic. It notes that neighborhood residential character
22 is affected by traffic. The plan also guides us to improve
23 pedestrian safety and limit the impact of traffic in
24 existing areas.

25 The master plan also notes "trees and forests play

1 an important role in communities such as north and west
2 Silver Spring providing shaded aesthetic beauty, wildlife
3 habitat, improved air quality. Maintaining this existing
4 healthy tree stock is important to the character of the
5 community and the plan also provides that at Cedar Street,
6 houses bordering the Chelsea site to the south stabilize
7 that edge of the community by providing a transition by use
8 not by structure.

9 When Mr. Iraola was asked to articulate how the
10 new plan was in compliance with these guidelines, the best
11 he could manage was that the town homes are a fee simple
12 home so we'll have front doors on the units facing
13 Springvale. That is hardly a demonstration of faithful
14 adherence to the master plan.

15 We are not here today saying that only retention
16 of the R-60 zoning will achieve master plan conformity. The
17 issue is not R-60 versus RT but rather RT at what maximum.
18 To achieve compatibility with the R-60 zoned homes, density
19 and massing must be reduced. This can be provided through
20 providing visual breaks, breaking up the barracks, reducing
21 that, providing more space as well as more overall green
22 space, perhaps even front lawns or back yards.

23 EYA should also commit the binding elements to
24 saving the number of specific existing healthy significant
25 or specimen trees on the property in order to maintain

1 canopy over the next 20 years to shield the neighborhood
2 from the CBD and other development. Master plan tree canopy
3 that shields the neighborhood from the CBD means saving, at
4 a very minimum, the irreplaceable specimen red and white
5 oaks and as many of the other healthy specimen and
6 significant trees as possible because they are so essential
7 to the character of the Seven Oaks Evanswood neighborhood.
8 They are just as important and vital to the community as the
9 Riggs-Thompson House. Right now, there really is no
10 flexibility in the dense design of the EYA plan to achieve
11 much beyond a clear cut of the property.

12 The master plan also guides us to minimizing
13 vehicular access routes to the town homes neighborhood and
14 leads to the conclusion that EYA should limit access to the
15 property to a single road from Ellsworth. In short, EYA has
16 done too little of what is necessary to achieve
17 compatibility under master plan guidelines.

18 Now, I want to turn to the environmental setting
19 issue. Vicki Warren has presented you with a wealth of
20 extensively researched and carefully documented evidence
21 that proves it was the intent of the council that the
22 reduced environmental setting wasn't tied to the special
23 exception granted to the school and that the event the
24 school no longer operated on the property, the environmental
25 setting should properly revert to the one point four of

1 parcel 73. I cannot do justice to her presentation with a
2 brief summary, and I'm sure you'll look it over carefully
3 but I do want to make a couple of points in response to Mr.
4 Harris.

5 First, the historic significance of the Riggs-
6 Thompson House is well documented in the files accompanying
7 its designation and inherent in preserving the house's place
8 in history is securing its setting by establishing a well-
9 defined perimeter of land serve as the environmental setting
10 and that was concern on the minds of the HPC and staff as
11 they met to move the properties designation forward in 1998.
12 Complicating their decision were the needs of the Chelsea
13 School seeking to buy the property.

14 A compromise reached by the HPC, one the planning
15 board thought it was endorsing in the master plan, allowed
16 the Chelsea School the flexibility it needed to structure
17 its campus around the house and to incorporate it in such a
18 way as to preserve and honor the house. To reach that
19 agreement, the environmental setting was reduced from what
20 would have been customary, the size of the parcel at the
21 time of designation. That compromise agreement was tied to
22 the school's being granted a special exception abiding by
23 the conditions of the special condition. This compromise
24 was documented in materials sent to the county council and
25 relied upon by the county legislative staff in recommending

1 approval of the language in the master plan. The rezoning
2 proposal effectively assumes abandonment of the special
3 exception and with it any rationale for the smaller
4 environmental setting. When a special exception is
5 approved, it must be implemented within two years or it is
6 deemed abandoned. That's what section 59A-4.5(3)(b)
7 provides.

8 Now, a literally minded and overly narrow reading
9 of the appendix which we say is an integral part of the
10 master plan is that it just talks about whether or not this
11 special exception is approved. It just uses the word
12 approved. So, just looking at it from that narrow and
13 literal perspective, it would mean that the environmental
14 setting became permanently point eight five acres once, on
15 the date that the special exception was approved, and that
16 would be so even if the special exception were later
17 invalidated because it was not timely implemented within the
18 structures of section A-453-B. But it is inconceivable and
19 nonsensical to suggest that if the Chelsea School had never
20 implemented the special exception and instead, I don't know,
21 the day after it was approved, sold the property for
22 development after it was approved, it would still be point
23 eight five acres.

24 The failure of the historic preservation
25 commission and then the planning board to map out every

1 conceivable eventuality regarding how and when the special
2 exception might later not be utilized is really of no
3 moment. The clear intent was reversion to one point four
4 acres once the rational for the smaller size was gone and
5 that rational is surely gone in this case where EYA has no
6 reason to seek the smaller setting other than by claim of
7 entitlement to do so because of an unintentional mismatch
8 between language in the body of the master plan and language
9 in the appendix.

10 Moreover, as the council expressly found in its
11 resolution at page 13 "the body of the master plan states
12 that it "summarizes the basis for its recommendations and
13 specifically refers to the more detailed analysis in the
14 appendix.

15 That is the council's take on that first paragraph
16 that Mr. Harris has talked about in his closing argument.
17 It is the council's take on that portion of the master plan
18 that should be deemed controlling by you in your
19 recommendation to the council. This alone is more than
20 enough reason, even without all of Vicki Warren's additional
21 supporting research to conclude that the master plan body
22 expressly incorporates the details in the appendix, even if
23 in many other instances master plan appendices serve only as
24 additional background information. That is not how appendix
25 deed to this master plan should be treated regardless of how

1 other appendices are treated in other master plans or,
2 indeed, other appendices in this master plan.

3 Finally, as to the choice between the parcel 73
4 one point four acre configuration and one with smaller
5 environmental setting to which adjoining HOA parkland is
6 added, our land use expert, Ken Doggett, Vicki Warren, and
7 Judy Christianson of Montgomery Preservation, had this to
8 say, essentially. The original parcel provides a better
9 view shed to the west and is vitally important to the
10 integrity of this historic site. A reconfigured setting
11 would harm that integrity. For lasting protection, the
12 Riggs-Thompson House and the entire one point four acre
13 parcel designated as the environmental setting must remain
14 under the control of the HPC where they have the authority
15 with regard to issuance of historic area work permits.

16 Under the binding element proposed today, the HPC would
17 not have that level of control. They would simply provide
18 an advisory function with regard to the portion of the one
19 point four acre parcel that is not included in the
20 environmental setting.

21 In short, with our research, we have painstakingly
22 shown without any contradiction from the available
23 evidentiary record that the entire one point four acre
24 setting was what the historic preservation commission, the
25 planning board, and the county council intended if the

1 Chelsea School did not continue to occupy this site.

2 I want to turn now to the alignment of the road
3 and the traffic problems, and I assure you I'm getting
4 there. EYA told the residents that it would not put a road
5 out from the development onto Springvale Road. Earlier, EYA
6 reminded the planning board of that commitment and assured
7 the board the site could function with access only to
8 Ellsworth Drive.

9 Mr. Youngentob told you in testimony in this case
10 earlier on that putting a road onto Springvale was his last
11 choice. I'm not sure that last choice was his exact words
12 but it certainly was to that effect. Despite all this, EYA
13 now proposes to implement exactly what it said it would not
14 do.

15 Twenty years ago, SOECA endured the problem of
16 cut-through traffic from down town Silver Spring.
17 Springvale Road, which is a narrow street, was especially
18 hard hit by this traffic. SOECA residence complained to the
19 county that worked out a traffic plan that included
20 restrictions. The county installed those restrictions at
21 its expense and the results were impressive. Cut-through
22 traffic ceased to be a problem. It obviously wasn't
23 neighborhood traffic. It was cut-through traffic.
24 Springvale Road remains today what it became in early 1990,
25 a quiet, lightly traveled street.

1 The plan to build an access road onto Springvale
2 will undermine the traffic restrictions and reopen the
3 neighborhood to cut-through traffic. If cut-through traffic
4 was bad 20 years ago, before the revitalization of downtown
5 Silver Spring, then Mr. Millson asks a logical question.
6 Why wouldn't it be worse in the future especially with
7 Silver Spring becoming even more densely developed in the
8 years ahead. That's certainly readily foreseeable.

9 EYA's traffic consultant didn't take this into
10 account and the district council specifically noted that
11 EYA's traffic engineers admitted that a road onto Springvale
12 would result in cut-through traffic. That's at page 11 of
13 the resolution. The resolution also noted that EYA's land
14 use expert believed that Springvale Road, being very narrow,
15 could not handle this increase in traffic and overflow
16 parking.

17 Now, EYA counters with this notion of erecting
18 traffic restriction signs on the property but there must be
19 an executive order to that effect for those signs to be
20 enforceable. There's certainly no guarantee this will
21 happen even if EYA requests it, and there's certainly no
22 evidence that the police would be aware of the order and
23 that they would be vigilant about enforcement. It is
24 certainly plausible and not refuted that if drivers are not
25 speeding or otherwise driving recklessly, a police officer

1 would be unlikely to stop them if they just drove into or
2 out of the development.

3 EYA's traffic expert testified that the town home
4 residents will enforce the traffic signs and we heard in
5 closing from Mr. Harris they would be even more concerned
6 about cut-through traffic then my clients. But, their
7 ability to enforce those restrictions is speculative at
8 best. It would require the town home residents to have the
9 ability to recognize each other's cars and faces. With 63
10 units, that doesn't seem very likely to happen. And how
11 will the residents be able to distinguish trespassers from
12 guests and family members who are visiting other residents?

13 As for EYA's plan to put a pork chop canal at the
14 end of Springvale directing drivers to the right, I just
15 don't see how that can be relied upon. You heard testimony
16 from Mr. Gurwitz about a similar pork chop in his parents
17 retirement community and the fact that they simply made wide
18 turns to the left to avoid the no right turn. As Mr.
19 Gurwitz noted, if this is being done by older, retired
20 citizens, what are the people in the Chelsea property likely
21 to do? Hardly any better.

22 People turning left onto Springvale at night would
23 inevitably sweep headlights in an arc across the homes on
24 the other side. Those long time residents who live there
25 will bear the burden of this. The infringement on their

1 right to quiet enjoyment of their homes is further cause not
2 to allow the access onto Springvale.

3 But, even if the pork chop worked as planned, the
4 high density of this development, what potentially 126 cars,
5 two per unit, guarantees that there would be a substantial
6 increase in traffic onto Springvale as town home residents
7 travel east to get to Whole Foods or west to get to
8 Ellsworth or wherever they're going.

9 It should also be noted that the higher the
10 density, the greater the danger that there'll be spill over
11 parking in the community. It is highly unlikely, despite
12 what Mr. Harris has said, that the HOA will strictly enforce
13 a prohibition on town home residents from parking outside
14 their garages. Moreover, at least three of the town homes
15 will not even have garages, and a number of the units are of
16 the size that would require tandem parking, that is where
17 one car parks behind the other in the garage which further
18 makes unlikely the complete use of the garage for two cars.
19 When you add in the readily foreseeable cars of visitors,
20 the odds of spillover parking are great especially when
21 there will always be temptation to use garage for storages
22 or other purposes, not just car parking.

23 The planning board specifically noted that
24 spillover parking is one of the primary causes of neighbor
25 to neighbor conflict. Another reason for there to be a

1 reduction in density.

2 As you've heard from SOECA's witnesses, EYA is
3 under no legal obligation to have two access roads into the
4 townhouse development. Because there's going to be fewer
5 than 100 town homes, they only require one access road, and
6 because there are fewer than 75 units, EYA can built a
7 single tertiary road into the development. We have the
8 definition of tertiary road in the record. I don't have the
9 exhibit number handy at the moment.

10 A single access road off Ellsworth would
11 completely eliminate the problem of cut-through traffic from
12 downtown and heavy traffic from the town home development
13 itself. It's really the right thing to do.

14 EYA has sited connectivity as a reason for having
15 two access points but why is connectivity limited to cars?
16 As EYA repeatedly points out in its model, live within
17 walking distance, then it can establish connectivity into
18 the rest of the neighborhood with pedestrian and bicycle
19 paths.

20 Even using EYAs own metric, vehicular
21 connectivity, it's ironic that EYA has stated that anyone
22 who enters the private road who is not a townhouse resident
23 or invited guest will be subject to criminal trespass laws.
24 Seven Oaks Evanswood residents have every right to question
25 just what kind of a connectivity that is, if it would result

1 in their arrest, if they dare take advantage of such
2 connectivity.

3 It was especially disturbing to watch during the
4 last hearing as EYA and its representatives immediately and
5 vociferously agreed that the rest of the neighborhood would
6 be considered trespasser is they were the cut-through
7 traffic. So, how can a development be compatible and
8 appropriate in a neighborhood where its developer believes
9 that surrounding neighborhoods are potential trespassers.

10 EYA further claims that having two access points is
11 preferable for emergency vehicle access yet it built only
12 one access route at Cameron Hill in downtown Silver Spring.
13 The record evidence here is clear that a T intersection, as
14 shown in Mr. Doggett's concept plan or even a normal sized
15 round cul-de-sac would be acceptable for emergency vehicles.
16 Nevertheless, if EYA is determined to have two access points
17 for emergency vehicle access, it has the freedom to build a
18 Y or a simple U shaped road with two access points leading
19 into and out of Ellsworth drive at the western edge of the
20 property with the straight edge of the leg leading deeper
21 east into the community and ending in either a cul-de-sac of
22 a T shaped turn terminate This would satisfy EYA's desire
23 for two access points and also SOECA's desire for no access
24 road out to Springvale.

25 Now, of course, all of these various

1 configurations would mean that EYA would have to sacrifice
2 some townhouse units. It all goes to show that I just don't
3 think that we're at their best and final offer when it comes
4 to density and massing.

5 Mr. Youngentob has testified that buildings in a
6 cul-de-sac would be difficult due to the grading and need
7 for a retaining wall but Mr. Iraola testified that a cul-de-
8 sac would be physically feasible and presumably EYA would
9 not have submitted a cul-de-sac option to the hearing
10 examiner last July if it wasn't prepared to build one.
11 Moreover, the cul-de-sac option was offered when EYA was
12 planning on building 76 town homes that ran much closer to
13 the steep grade at the eastern side of the property. Now,
14 they're building fewer town homes ending further west.
15 Given this history, it's difficult to accept Mr.
16 Youngentob's argument that EYA would suddenly not be able to
17 do a cul-de-sac under the plan.

18 In short, EYA should be allowed to have only one
19 road into the property. It should be off Ellsworth Drive.
20 It would eliminate all the problems, and if they want two
21 access points, they can put them in and they'd both be on
22 Ellsworth. There's no need for a road to Springvale, and
23 the many reasons why the road is problematic would show a
24 lack of compatibility of this proposal with the master plan
25 in the neighborhood.

1 Turning to trees, the record is clear that the
2 survival of the magnificent mature trees that now occupy the
3 property is linked to the level of density and massing of
4 the proposed development. Simply put, the lower the density
5 and massing, the more trees that can be saved.

6 The tree canopy on the property cuts to the heart
7 of the compatibility issue. It's important to remember that
8 mature trees surround this property on all sides. You know,
9 you can see it from Exhibit 32A and also from Exhibit 17 the
10 inventory. The preservation of those trees is important to
11 compatibility with the neighborhood. There is a reason it's
12 called Seven Oaks Evanswood after all.

13 The stately mature trees in that neighborhood are
14 important to why they have chosen to live there. They made
15 a choice buying houses that are there biggest investment
16 with the assurance that preservation of those trees was the
17 official policy of the county implemented through the forest
18 conservation law. The site includes significant trees of 24
19 inches in diameter or greater and many specimen trees of 30
20 inches or greater. The details of what is likely to happen
21 to those trees is set forth in testimony concerning the
22 original 76 unit plan to which the preliminary forest
23 conservation plan is geared. That testimony is summarized
24 at pages 65 to 66 of our written closing argument, Exhibit
25 255. I'm not going to go into it here but I just point I

1 tout to you. It provides details of the predicted removal
2 of 14 specimen trees, 10 of which have diameters of over two
3 feet and there's nothing in the record to suggest that most
4 or all of those trees slated for death or destruction under
5 the old plan are not still subject to that same fate under
6 the new plan. They could have told you that it wasn't but
7 they didn't. They declined the opportunity to present that
8 evidence.

9 Of course the schematic development plan proposes
10 the planting of new trees but as Mr. Doggett explained, it
11 does include enough open ground for these trees to become as
12 large as those destined for removal from the site. So, I
13 guess we have a disagreement here between Mr. Doggett's
14 expert testimony and Mr. Thakkar's second hand description
15 of what he heard from his arborist. But, just technically
16 meeting the minimal requirements of the forest conservation
17 law and qualifying for exceptions does not resolve the
18 legitimate concerns of the community about the removal of
19 large, mature trees from the site and the loss of the
20 benefit they provide. They have great value not only to
21 those living in the community but those who will be buying
22 new homes. Retaining and protecting these trees is
23 consistent with the flexibility of design that is the whole
24 underlying rational for doing RT rezoning here in the first
25 place.

1 If EYA, that should be the case, is obliged to go
2 back to the drawing board once more, the revised and less
3 dense plan should be designed to save as many of the healthy
4 specimen trees as possible, and to that end, I refer you to
5 the proposed binding element and modifications in Exhibit
6 340 that we submitted.

7 Just as one added comment to that. It may be the
8 case, and we're not saying that it is but it may be the case
9 that many of those trees along the right-of-way cannot be
10 saved because of rework in the right-of-way but that doesn't
11 change the fact that the more important trees in the
12 southwest corner of the property, the grove of trees that
13 are depicted in Mr. Doggett's concept plan is basically in
14 significant tree savings as predicted by Mr. Doggett in his
15 concept plan could well be realized down in that corner of
16 the property.

17 So, maybe we can't have the whole loaf if we go to
18 RT8 zoning but we certainly have something along the lines
19 of half a loaf in the way of preserving trees and existing
20 tree canopy.

21 I'm not going to dwell on either the storm water
22 or environmental issues but you do have testimony in the
23 case about concerns about storm water and environmental
24 compatibility. These are basically largely unresolved
25 problems that would get resolved at site plan but I will say

1 that in terms of evaluating the question of RT what. The
2 fact that there are issues in these two areas as articulated
3 by our witnesses yesterday, only heightens the importance of
4 paying careful attention to that question of RT what. When
5 you decide what is compatible and appropriate for this site.

6 In conclusion, I know you were waiting for me to
7 say that, for all the foregoing reasons, EYA's new schematic
8 development plan fails to respond to the directives of the
9 remand order and should be rejected. EYA must come back
10 with a new plan that is less dense, has less massing, does
11 not put an access road on Springvale, saves as many trees as
12 possible and achieves compatibility with the surrounding R-
13 60 zone neighborhood north of Cedar Street. Moreover, any
14 new plan must include the original one point four acre
15 setting, environmental setting. EYA was expected to do
16 better in its latest proposal and has to do more if it wants
17 to build town homes on this R-60 zoned property with greater
18 density and a huge bonus, in terms of the value of this
19 property comes greater responsibility.

20 The Chelsea School will -- and now I want to look
21 beyond this case and think about the larger implications of
22 it. The Chelsea School case will set a precedent for the
23 rest of the down county area where efforts are underway to
24 increase infield development. The Chelsea School property
25 gives the council, county planners, and EYA an opportunity

1 to showcase their particular development talents to achieve
2 a truly compatible, denser development inside an R-60
3 neighborhood. Compatibility will be defined by respecting
4 the neighborhoods history with comprehensive preservation of
5 the unique Riggs-Thompson House and its setting preserving
6 old growth canopy to blend with the surrounding neighborhood
7 and taking utmost care with storm water to protect Sligo
8 Creek and the Anacostia Watershed, promoting walkable
9 connectivity through foot paths and limiting vehicular
10 traffic on quiet surrounding streets.

11 As infield projects increase, we should strive to
12 give developers and planners and most importantly citizens a
13 model to look at. A dense development that truly integrates
14 into the leafy green walkable communities in the down county
15 areas. If done correctly, this case can serve as that model
16 for future development.

17 SOECA is ready and willing to work with EYA to
18 make that a reality. Thank you.

19 MS. ROBESON: Thank you, Mr. Brown. Mr. Harris,
20 do you have a brief response?

21 MR. HARRIS: It'll be briefer than Mr. Brown's I
22 can tell you that by about 90 percent. Yes. Very brief.
23 I'm tempted not to respond at all because I've not heard
24 anything that I think changes anything in the record or any
25 of the conclusions that were apparent to me so far. I'd

1 invite you to look at the evidence, not Mr. Brown's
2 interpretation of the evidence, and I'd particularly invite
3 you to look at the law, not Mr. Brown's interpretation of
4 the law particularly as it relates to re-subdivision issues.

5 Even more importantly, I'd invite you to look at
6 the planning board's letter because they have already looked
7 at those issues as well, and I think it provides good
8 guidance.

9 I said I was tempted not to respond but I will
10 respond to some things. I'm particularly bothered by the
11 very start and Mr. Brown's creative interpretation of the
12 re-subdivision requirements and the subdivision law in
13 general, and he's just flat wrong. I'm sorry, and the
14 planning board has already told him that as well.

15 Clearly as you indicated, an applicant can include
16 multiple parcels in a rezoning. It happens all the time.
17 Here, we're not even doing that. It's one parcel. So,
18 clearly we have the right to include that in rezoning.

19 Mr. Brown offered a hypothetical about PEPCO and
20 all of this. I had trouble following it a little bit but
21 basically as I understood his comment it was that if you
22 were to take a site that had some single family homes on it
23 and try to include those units in your density calculation
24 with the intention of keeping those homes there that you
25 could not include that land in the zoning application. He

1 cited no case for it, no provision in the zoning code for it
2 because there are none. To the contrary, it happens
3 regularly, and it can happen in reverse. One of the cases
4 that they cited, the Good Counsel case is an example where
5 the entire gross tract was calculated for density. They did
6 put some single family homes on the tract but they didn't
7 take out that land area for those single family homes from
8 the tract. Clearly, unequivocally, you're entitled to count
9 that and my legal memorandum gives you specifics on that and
10 the planning board addressed it very clearly.

11 MR. Brown has dragged a red herring in the path
12 here by, again, referring to section 59A-6.2 of the zoning
13 ordinance. That simply is not what's in play here. That is
14 a situation where when you have property in two different
15 zones. Even then, you can include both pieces of property
16 in your zoning application for density purposes. We're not
17 doing that. We don't have property in two different zones.
18 We have property that is seeking one zone and so it is a
19 completely different situation. It's not that provision on
20 which we're relying. 1 We're relying on the definition of
21 gross tract area and a long, long standing precedent in the
22 county about being able to include all of that.

23 We cited precedent to the planning board. I'm not
24 sure whether I had those in my written legal memorandum but
25 the Bryn Warfield has, in the Cabin Branch Community, in

1 Clarksburg, the Marwood House, in Potomac, the Millbrook
2 House up in Brookeville, the Bethesda Theater in Bethesda,
3 and not to mention the Woodside Station, I think it is,
4 Woodside Courts project to which they refer repeatedly, all
5 included historic properties within the gross tract area,
6 density, green area, and everything else calculated on the
7 entirety, and last on that point, you know, don't take my
8 word for it, take the planning board's word for it. That's
9 a given, and I had trouble following that argument..

10 Mr. Brown has suggested that we're here
11 bargaining. Referred to us as essentially rug merchants
12 and, you know, I'm not going to, you know, get down into
13 name calling here but I will say that is simply not the
14 case, and I'm actually offended by the implication. We have
15 always worked with the community from the day one to try to
16 do a good plan here. The R-T 15 plan itself was
17 justifiable. The planning director was questioning us as
18 was the Smart Group Alliance why we weren't doing more
19 because they thought this site demanded even greater
20 density. It was a credible plan. The fact that the
21 planning board supported it, the fact that the staff
22 supported it, and at least four of the council members voted
23 for it does mean that it's a credible plan. We were not
24 selling a rug there. Even that plan was significantly lower
25 than the density of a lot of EYA plans in comparable

1 locations, and it would be an underutilization of this site
2 to cut the density further. We're pleased that the planning
3 staff and the planning board are fully supportive. Again,
4 the fact that he has no confidence that the planning board
5 will review the site plan as an honest broker concerns me
6 because I think that is what they do regularly and not all
7 of us like their result but I think we all agree that they
8 are a very serious review body and they give legitimate
9 claims serious consideration.

10 I wanted to say this earlier. Throughout the
11 hearing there have been references to the council
12 resolution, and I just want to make sure everybody knows
13 that resolution was written before the oral argument and
14 before the council discussed this. Those words are not the
15 council words other than the fact that they adopted it for
16 their resolution out of convenience. What their words are
17 are in the actions. That was the motion made by Mr.
18 Ehrlich, I believe, and seconded and then voted on by the
19 council. So, we have to be careful not to --

20 MS. ROBESON: Okay. I wouldn't characterize it
21 that way but go ahead.

22 MR. HARRIS: Okay. There are inconsistencies
23 between the final action, even, and the body of their
24 resolution.

25 MS. ROBESON: Yeah. There are so many statutory

1 interpretations in this case. I'll take it for the sake of
2 argument.

3 MR. HARRIS: Okay. That's fine. They spent a lot
4 of time on compatibility and a wise man once told me that
5 compatibility does not mean saneness, and he compared it to
6 he and his wife. He said my wife and I are very different.

7 MS. ROBESON: Wait. I thought that was --

8 MR. HARRIS: Exactly.

9 MS. ROBESON: Yeah. Go ahead.

10 MR. HARRIS: We have to keep that in mind. EYA
11 has many projects all of which have been deemed compatible
12 and approved in their settings and as you've heard, some of
13 them are much higher density but they are in similar
14 settings and we think that the plan we put forward is very
15 good. The fact that Mr. Doggett effectively adopted it as
16 his plan, again, gives great credibility to it. So, I'm
17 troubled by the fact that Mr. Brown is criticizing,
18 clustering the development in the center of this site when
19 that's the plan they've put forward as well. He criticizes
20 this as barracks. These are, essentially, the same
21 configuration. So, I find that disingenuous.

22 You had asked a question and Mr. Brown has
23 referenced this about the issue of use and structures for
24 transition, and I think you were quoting from page 45 of the
25 current master plan which, itself, is quoting from or, you

1 know, summarizing the 1978 plan. So --

2 MR. BROWN: What page?

3 MR. HARRIS: Page 43. I'm sorry. Where it talks
4 about -- it says 1978 North Silver Spring recommended that
5 certain properties were suitable to apply for special
6 exceptions, blah, blah, blah. According to the '78 sector
7 plan, the purpose of this recommendation was to provide a
8 transition, by use not by structure type, and but you asked
9 a question about it. Mr. Iraola answered it to the best of
10 his ability but I want to sort of return to that because as
11 I interpret the 1978 plan to whatever extent it may still
12 apply under the 2000 plan was that there was a recognition
13 that you can transition by structure type. You can
14 transition by use, and they were saying that the Cedar
15 Street houses could be a transition by use. Their structure
16 type is residential but they could be used by business use,
17 and that would serve as a suitable transition. But, it
18 didn't rule out a transition by use as well. Going to a
19 residential use on the Chelsea School property is clearly a
20 transitional use, and, in fact, it is the same use,
21 residential, as is across the street. So, by saying you can
22 transition by use doesn't mean you can't do townhouses
23 there. It just meant that those Cedar Street houses would,
24 themselves, function as part of the transition.

25 The entire first hearing, as I recall, was largely

1 about protecting the Riggs-Thompson House. Suddenly, now,
2 the greater cause is protecting the trees. I note that the
3 first Doggett plan, as I've said before, had essentially the
4 same tree impact. It preserved the house, and that's what
5 it was focused on. But, now, we're focused on preserving
6 the trees but, again, any redevelopment of this property is
7 going to impact trees. That's a given. The Chelsea School
8 special exception was going to impact all of these trees or
9 many of these trees as well. We don't have specifics but
10 Exhibit 192 shows where that impact would be and it would be
11 throughout the site including Springvale Road and that was
12 an approved plan. We will deal with the tree issue and the
13 time of subdivision and site plan, and we will be held to
14 the requirements that ensure tree preservation as required.

15 In terms of the environmental setting, again, I
16 find the interpretation of the legislative history
17 imaginative particularly that someone now knows that the
18 planning board thought it was supporting something other
19 than what was written in the plan. I just think the
20 planning board thought they were sending the plan up, and I
21 see no evidence to suggest that they thought they were
22 supporting something else.

23 In terms of the Chelsea School and the
24 abandonment, let's make one thing clear. The Chelsea School
25 is operating today under the special exception. That

1 special exception has not been abandoned at all. They are a
2 nonreligious school that can only operate in that zone when
3 they own the property as a special exception use. They were
4 allowed as a tenant of Holy Names because Holy Names was
5 exempt but the moment they bought the property, they needed
6 a special exception and that special exception has been in
7 place since then. So, they have implemented the special
8 exception. They might not have built all the buildings but
9 that doesn't mean they have implemented the special
10 exception, and you don't have to take my word on this. The
11 record from the previous hearings here showed that the
12 community had questioned that very issue a number of years
13 ago, and the board of appeals ruled that, no. Their special
14 exception had been implemented and they didn't have to do
15 everything in the special exception at that time. So, that
16 special exception remains in effect today.

17 On the issue of cut-through traffic, again,
18 speculation versus evidence, and to cite to our traffic
19 engineer who, on cross examination last time, said that
20 there could be cut-through traffic. So suggest that we
21 believe there will be cut-through traffic is not
22 appropriate. This engineer, today, has studied it much more
23 carefully. He's done trial runs of time conditions. We've
24 come up with new traffic restrictions in terms of
25 restrictions at Springvale Road, and to whatever extent, his

1 boss said that, he has corrected and given his
2 interpretation that there will not be cut-through traffic.
3 The planning staff and planning board have affirmed that.

4 With respect to police enforcement, I see no doubt
5 that the police will enforce this. If I'm an owner in one
6 of the units and somebody's -- there's cut-through traffic,
7 I'm going to get the police there and they are going to
8 enforce it. I'm going to take license plate numbers if I
9 see people cutting through there to any degree, and I'm
10 going to have them measures enforced, and I do think that
11 the residents, they'll be out and around here. You can
12 easily tell if a car comes in at Ellsworth, drives up
13 private street A and goes right out and makes the turn
14 because there are no private driveways after the turn. If
15 they make that turn and head up there, they're cutting
16 through, and I don't think it's going to happen but to the
17 extent it does, the residents will be all over that.

18 In terms of the cul-de-sac, I appreciate Mr.
19 Brown's engineering of this but what he fails to recognize
20 is that the cul-de-sac -- he's suggesting that we showed
21 that a cul-de-sac could work before with the RT 15 plan, and
22 therefore, it should be able to work well now. The
23 difference is that the plan then had the townhouses coming
24 much closer to the Riggs-Thompson House. That's the flat
25 area. The cul-de-sac was going to be there.

1 Now, we have agreed to pull all development back
2 from that. So, it's a completely different cul-de-sac
3 situation and while it can be built, it is inferior, as
4 you've heard.

5 As far as precedent, that's not a remand issue.
6 They had raised that question the first go around and it
7 didn't get traction then, and I don't think it should get
8 traction now. Frankly, the argument of precedent would be
9 raised in every rezoning case because theoretically, any
10 rezoning case can be a precedent for another one. But, the
11 reality is that each case stands on its own. The planning
12 board, you, the hearing examiner's office and the council
13 look at the facts in each case and if the zoning is
14 justified, it's justified. If it's not, it's not, and it
15 doesn't matter what was done on a different block. The
16 planning board, the ZHE the first time, and the council have
17 expressed no concern about precedent and I think that is a
18 nonissue here as well.

19 We've put forth a very good plan that addresses
20 the issues and we'd invite you to look at the evidence, look
21 at the planning board's careful evaluation of this, and look
22 at the law including that on the re-subdivision issue, and
23 we think all support this plan at this point in time.
24 Thanks again for your patience.

25 MS. ROBESON: Thank you, and thanks to all the

1 parties for your good work. That is the last word. So, I
2 think when I was looking at this last night, I think that I
3 have to keep the record open just to permit the changes that
4 we discussed in the development plan which I believe is to
5 remove the footnote related to the buffer that was
6 incorrectly left over from the last plan and then to add the
7 new binding elements with the corrections we made, and if
8 you need a copy of what I wrote down, you can have those,
9 and then also to show the open space you're referring to in
10 the one binding element related to the historic setting, I
11 was shuffling through exhibits while you were talking to
12 follow what you were saying, to show the space you're
13 referring to in Exhibit 343 which is the space that's going
14 to be preserved under those, you're proffering to be
15 preserved under those covenants.

16 MR. HARRIS: Yes.

17 MS. ROBESON: So, my question is how soon can you
18 do that?

19 MR. HARRIS: As we all turn around to the engineer
20 with the job.

21 MR. GURWITZ: Tuesday.

22 MS. ROBESON: Isn't that fun?

23 MR. HARRIS: Tuesday.

24 MS. ROBESON: So, I'm going to hold the record
25 open until Tuesday, I believe it's April 3, 2012 at close of

1 -- I would appreciate it if you could get I tin by 4:30.
2 Otherwise, sometimes staff has to stay late.

3 MR. HARRIS: We have a head nod and so that's an
4 affirmative. I just want to clarify the --

5 MR. BROWN: We'll get a copy of that. Right?

6 MR. HARRIS: Sure.

7 MS. ROBESON: You will do that?

8 MR. HARRIS: Sure.

9 MS. ROBESON: Thank you.

10 MR. HARRIS: Not a problem. Just want to clarify
11 that the final schematic development plan will, as well,
12 show what we've been calling the pork chop in that because
13 that is what we've committed to, to deal with the OT.

14 MS. ROBESON: Okay. That's another change then.
15 All right. Okay.

16 MR. HARRIS: Oh. I'm sorry. I've been reminded.
17 The letter from DOT mentions two other things. The curb
18 return radius at the entrance on Ellsworth. They wanted
19 that to reflect a sharper, a tighter radius so that it would
20 not suggest that you could come out and take a right on
21 Ellsworth, and there was one other, you say?

22 MR. GURWITZ: Crosswalk.

23 MR. HARRIS: Oh. The crosswalks on Ellsworth down
24 at the southwest corner of the --

25 MS. ROBESON: Well, I'm a little reluctant. I

1 mean, I think that those are -- I haven't heard testimony --

2 MR. HARRIS: Okay.

3 MS. ROBESON: -- on those.

4 MR. HARRIS: I don't think we need to put them in.

5 MS. ROBESON: And I think that that is something -

6 - what is your binding element? So what you're doing is

7 proffering -- hold on one second. It's not in that one.

8 Well, I think you're proffering that those items are going

9 to occur.

10 MR. HARRIS: Yes.

11 MS. ROBESON: I don't recall hearing that in the

12 testimony or seeing it in an exhibit, and I don't want to

13 open it up at the last minute.

14 MR. HARRIS: I don't recall either of those. I do

15 recall, though, discussing the --

16 MS. ROBESON: I remember the pork chop.

17 MR. HARRIS: Yes. The pork chop, and the bump

18 out --

19 MS. ROBESON: And the bump out.

20 MR. HARRIS: -- on Pershing.

21 MS. ROBESON: Yes.

22 MR. HARRIS: So, I would suggest we put those in

23 there but not the other.

24 MS. ROBESON: Okay. All right, any other

25 housekeeping?

1 CB: We also need to get you a disc of the
2 exhibits.

3 MS. ROBESON: I need a disc of the applicant's
4 exhibits.

5 CB: Right.

6 MS. ROBESON: I think that I have -- and if you
7 could on the disc number, give each document the -- save
8 each document so that the document, the exhibit number shows
9 up in the document title. That would help me a lot. And I
10 have Mr. Doggett's plan, I believe, 314V on a disc, and I
11 think the other exhibits are easily from the opposition. We
12 have the capability of scanning those in. So, with that --

13 MR. BROWN: I'd like to put just a couple of very
14 quick comments on the record if I may?

15 MS. ROBESON: Uh-huh.

16 MR. BROWN: First, I want to apologize for the
17 length of my closing argument. I literally did not have
18 time to make it shorter in the amount of time I had to work
19 with what I was provided.

20 MS. ROBESON: Well, that's fine.

21 MR. BROWN: Secondly, I want to reassure Mr.
22 Harris that I meant no offense in comparing the EYAs
23 approach to this case to the grand and honorable centuries
24 old tradition of bargaining in the Ottoman culture. It's a
25 different culture but it is not offensive, and I certainly

1 meant no offense by using it but I do think it has a
2 parallel in this case that is worth looking at. Thank you.

3 MS. ROBESON: Oh. That's the last word. All
4 right, all right. So, the record's open right now only to
5 permit the amended schematic development plan in, and that
6 will be by 4:30, Tuesday, April 3rd. All right? Thank you.

7 MR. HARRIS: Thank you.

8 MR. BROWN: Thank you.

9 (Whereupon, at 5:58 p.m., the hearing was
10 concluded.)

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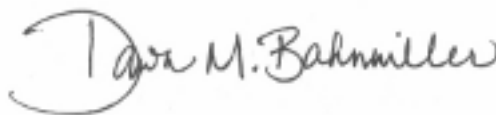
C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Office of Zoning and Administrative Hearings for Montgomery County in the matter of:

Chelsea School Remand Hearing

Special Exception No. G-892

By:

A handwritten signature in dark ink, reading "Dawn M. BahnMiller". The signature is written in a cursive style, with the first name "Dawn" being more prominent and the last name "BahnMiller" following it.

Dawn M. BahnMiller, Transcriber